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FINAL EXAMINATION IN ADMINISTRATIVE LAW (Law 323)

First Semester 1958-1959

Professor Cohn

Time -- 4 Hours

1. (a) On January 15, 1956, the Federal Communications Commission publicly announced that it was undertaking an extensive investigation into the practice of local television stations of editorializing and giving views on public and political issues, and the extent of ownership interest in such stations by newspapers. It suggested that such practices and ownership interests were to be investigated in the light of their relationship to the FCC's statutory mandate to protect the public interest in the use of these facilities by its licensees. The Commission is authorized to investigate conditions and practices in the television industry, to issue subpoenas and require reports of licensees, and "to adopt such regulations and make such orders as are necessary to assure compliance with this Act and the protection of the public interest."

Section 6 of the FCC Act provides that "any person adversely affected or aggrieved by an order of the Commission granting or refusing an application for a construction permit for a television station or for a television station license, or for the renewal or modification of any such license," may secure review thereof by petition for review filed in the Court of Appeals of the District of Columbia. Section 7 provides that any person adversely affected or aggrieved by any order of the Commission not reviewable under Section 6 may file suit to enjoin, set aside, annul or suspend the order in any appropriate district court.

On February 1, 1956, six television station licensees, and six newspaper corporations alleging ownership of all or a part of these television stations, instituted an action under Section 7 for an injunction to enjoin the Commission from proceeding with its investigation.

Discuss the issues and give decision. Assume that only the provisions of the FCC Act are applicable.

(b) Assume no such action under (a). The Commission, without hearings, investigates the practices and ownership aspects referred to in (a). On January 7, 1959, it submits to Congress and the President a 2000-page documented report on the results of its investigation, concluding that the public interest requires it to promulgate regulations imposing an absolute ban on editorializing practices, and a policy requiring disapproval of applications for new licenses and denying renewal of existing licenses to any applicant or station whose controlling ownership interest is a newspaper. On the same day, the FCC files such regulations for publication in the Federal Register. The regulation pertaining to ownership interests permits local stations to operate without prejudice until January 1, 1962, in order to allow a reasonable time for the liquidation of unpermitted newspaper ownership interests.

On April 1, 1959, six newspaper corporations owning the controlling interest in six television stations, and the six stations, file suit under Section 7 to set aside and annul the regulations and to enjoin the Commission from enforcing them. Discuss and determine the issues (1) on the assumption that the Federal Administrative Procedure Act has not been enacted, and (2) in the light of the Federal Administrative Procedure Act.

(c) In a proceeding before the Federal Trade Commission charging a manufacturer with false and deceptive advertising practices, the trial examiner made findings of fact contrary to the charges in the complaint issued by the Commission. By stipulation of the manufacturer and the Commission, the entire record consisted of written exhibits and other documentary evidence. In addition to his findings that the practices complained of were not in fact false or deceptive, the trial examiner submitted conclusions that the statute could not be interpreted to cover the particular advertising practices charged in the complaint. The Commission rejected the examiner's findings of fact, conclusions, and recommended decision that the complaint be dismissed, and entered its own findings and order that the manufacturer was guilty of a violation of the Act. The District Court, in a review proceeding, stated that "on the record considered as a whole, excluding the examiner's findings and conclusions which we have not considered relevant, the findings and order of the Commission are supported by substantial evidence and are affirmed." The Court of Appeals affirms the District Court and the Supreme Court grants certiorari.

3. The Walsh-Healy Act provides that any contract made with an agency of the United States for manufacture^{or} for furnishing materials, equipment, and supplies in excess of \$10,000 shall contain stipulations for the payment of minimum rates of pay and overtime rates of compensation for overtime work. It provides further that a violation of any of the stipulations shall render the offending party liable to the United States in a sum equal to the amount of underpayment of wages due any employee engaged in the performance of the contract; that sums due the United States may be recovered in suits in the name of the United States by the Attorney General; and that sums recovered in such suits shall be held in a special deposit amount and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than the rates to which they were entitled. The statute empowers the Secretary of Labor to conduct hearings and make findings of fact in respect to failure to pay less than minimum regular or overtime rates, and expressly makes such findings conclusive in any court of the United States if supported by a preponderance of the evidence.

Pursuant to this Act the United States instituted an action against General Materials Corporation to recover damages for failure to pay overtime rates to employees governed by a contract under the Walsh-Healy Act. The complaint alleged that the Secretary of Labor had initiated an administrative proceeding against the defendant which had been assigned to a hearing examiner; that after a hearing, findings of fact would be made which would be conclusive if supported by a preponderance of the evidence, and that upon becoming final, such findings would be filed in this cause together with a certified copy of the record made in the administrative proceeding. The complaint prayed that the court order a stay of further proceedings in the cause until the completion of the administrative proceeding, the making of findings therein, and the filing in this cause of the findings and a certified copy of the record, and that upon final hearing judgment be rendered in favor of the United States for the sum due from defendant.

Defendant's motion to dismiss the complaint was granted and the government appeals. Discuss the issues raised and give decision.

4. A statute of the State of X regulated ^{coal} ~~local~~ mining and miners. Among other provisions it required that mine managers, defined as the persons in charge of the general direction of underground work, be licensed. Examinations were prescribed to test the qualifications of applicants for mine managers, including a test of the applicant's ability to manage men, to operate mine machinery and appliances, and to apply first-aid measures to injured persons.

The statute provided that the license of a mine manager could be revoked without notice and hearing if the State Mining Board determined that "the holder thereof has become unworthy to hold the license by reason of incapacity, abuse of authority, or other good cause." Upon such action, the license holder could request a hearing upon the charges. At the conclusion of the hearing, the Board was authorized to "affirm, reverse or modify" its original order of revocation. The statute further provided that in any hearing before it, the Board should not be bound by technical rules of procedure or evidence. Judicial review by certiorari was provided.

Jones successfully passed his examination and was issued a license as a mine manager. Thereafter he was employed in that capacity by the Perfection Coal Company. Three years after such employment began, without hearing, the Board revoked his license, the notice of revocation stating: "Effective immediately, your license as mine manager is revoked on grounds that you are addicted to the use of alcoholic liquor to an extent which renders you incapable of performing your duties properly, and on the further ground that you have owned and operated a gambling enterprise in violation of state law. You are entitled to a hearing before the State Mining Board if request therefor is made within 30 days from the date of this order. You are not to engage in employment as a mine manager and your employer, Perfection Coal Company, and all other coal operators in this State have been notified of the revocation of your license, effective immediately."

(a) Jones files an injunction action to enjoin the Board from enforcing its order, alleging the statute and the Board's action to be unconstitutional. Discuss the issues and render decision.

(b) Instead of filing an injunction suit, Jones requests a hearing before the Board. At the hearing, Jackson, assistant mine manager at Perfection, testifies that on three separate days he detected an alcoholic odor on Jones' breath during working hours. Two other employees testify to the same effect. None of these witnesses can testify that he observed Jones in the act of taking an alcoholic drink on the job, but Jackson testifies, over objection, that he had interrogated most of the miners, and that two miners who refused to have their names divulged told him that they had actually observed Jones drinking liquor on the job on two occasions within the month immediately preceding the revocation of his license. Jones, on direct and cross-examination, denied that he had ever taken a drink while on the job although admitting that he did drink occasionally and in moderation after working hours. Over Jones' objection, the Board placed in evidence the written report of its employee-investigator Adams, who had since resigned and moved to parts unknown, to the effect that Jones was a nightly customer at the local pub, the Green Light, and that on three specifically designated nights in the month immediately preceding the revocation of Jones' license, Jones had imbibed liquor in such quantities as to require assistance in getting to his home, and that on two of those occasions Jones had "passed out completely." Jones denied the truth of these charges.

The Board offered in evidence a certified copy of the record of conviction of Jones for the illegal ownership and operation of a gambling enterprise, for which he had been fined \$100 after a plea of guilty. Jones objected to the introduction of this evidence but did not deny or contest the matters covered therein.

One week after the conclusion of the hearing, the Board entered an order in the following terms: "The State Mining Board hereby affirms its order revoking the license of Sam Jones. We find as the facts upon which this order is based that

1. Jones is excessively addicted to the use of alcoholic liquor, and
2. Jones has been convicted of a criminal offense, namely, the ownership and operation of a gambling enterprise."

Jones seeks review of the order by certiorari as authorized by the statute.

Discuss and analyze the issues, giving decision.

5. Answer each of the following questions T (true) or F (false) in the examination booklet:

1. The federal Administrative Procedure Act, except as to agencies exempt from its application, compels notice, hearing, and record requirements for all agency action which is adjudicative in nature.
2. Agency interpretation of statutory terms is usually a question of law on judicial review calling for independent judicial interpretation, though exceptions justifying limited judicial rule are occasionally recognized.
3. Written notice of all agency charges is constitutionally requisite wherever agency adjudicative action embraces charges not specified in the initial notice.
4. Certiorari is generally not appropriate as a review remedy where agency action is not based upon a hearing and record requirement.
5. The "required records" doctrine does not prevent a claim of the 5th Amendment privilege where disclosure of the records will incriminate a person in a penal offense.
6. The exercise of the rule-making function may constitutionally be exercised without the trial type proceedings customary in agency adjudication.
7. Every exercise of agency authority must be referable to a constitutional or statutory grant of power.
8. The federal substantial evidence rule does not permit the sustainment of agency findings of fact when the heavy preponderance of evidence is contrary to the findings.
9. A state's immunity from suit does not foreclose actions against state officers or agencies allegedly acting in violation of the constitution.
10. The "final order" rule generally does not preclude judicial review of interlocutory or preliminary agency orders.

TIME: 4 HOURS

Note: You are not to assume that the statutory provisions referred to in the problems relating to federal agencies are necessarily correct in all respects.

1. Section 10 of a state Unemployment Compensation Act reads in part as follows:

"An individual who has left his most recent work voluntarily without good cause shall not be eligible for benefits with respect to the week in which such leaving occurred and with respect to not less than four nor more than nine consecutive weeks of unemployment which immediately follow such week, as determined by the Board in such case according to the seriousness of the case. In addition such individual's total benefit amount may be reduced in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount."

Section 20 provides that

"application by employees for benefits and by employers for a determination of their status and liability under this Act shall be heard by the Board, with notice to all affected persons to be given by registered mail."

That section then continues as follows:

"At the conclusion of the hearing, the Board shall render its decision which shall be accompanied by findings of fact upon which the decision is based. Any person affected by any order or decision of the Board may seek a review thereof in the circuit court of the county in which the employee resides or the employer has his principal place of business, on all questions of law and fact presented by the record, by petition for review filed in accordance with the requirements of the state procedure act. At the request of any party to the proceeding, the court, in lieu of reviewing the record, shall hold a trial de novo in which full and complete opportunity to present evidence bearing on all issues of law and fact shall be afforded the parties. The findings of fact of the Board, if supported by substantial evidence, shall be conclusive and final. In any proceeding before the Board, it shall not be bound by technical or formal rules of evidence or procedure."

The Board causes notice to be published in newspapers of general circulation throughout the state that on a given date, place, and time it will hold a public hearing "to hear the views of interested persons concerning the meaning of the terms 'voluntarily' and 'good cause' in Section 10 as these terms affect the eligibility of individuals for unemployment compensation benefits, as an aid to the Board in interpreting and applying Section 10." At the hearing which is well attended by numerous employees, employers, and representatives of labor unions and employer organizations, the Chairman of the State Board announces that the Board will hear all statements desired to be made and receive any written statements, exhibits, or reports submitted, but that no examination or cross-examination of any person will be permitted. Numerous objections to this procedure are voiced, which the Chairman announces "will be noted in the record." A stenographer employee of the Board is present for the purpose of "entering and transcribing a full report of all evidence received at the hearing."

A month after the end of the hearings, the Board announced and published a "general order" defining "voluntarily" and "good cause" as these terms were employed in Section 10. A portion of this order stated as follows:

"It shall not be deemed 'good cause' for an employee to leave the employment of an employer who lawfully maintains an open shop policy of employment, notwithstanding that continuation in such employment would jeopardize the employee's union status, including seniority rights and insurance and other union benefits."

In an accompanying statement of explanation, the Board revealed that it had considered the evidence taken at the public hearing but that it was primarily influenced in reaching this decision as a result of its own investigation of the administrative interpretation of the same statutory terms in every state in the Union and the heavy preponderance in such states favoring the interpretation adopted, of which it said it "took notice."

(a) Adams, a union employee of the X Manufacturing Company which legally maintains an open shop policy, and Local No. 278, an affiliate of the International Garment Workers Union, with which Adams is not affiliated, file separate injunction and declaratory judgment actions which seek to declare the order invalid and to enjoin its application by the State Board. Adams alleges that if he continues his employment with the X Manufacturing Company, he will be in violation of his union rules and will lose his membership, including seniority status, his insurance, and other union benefits. The actions are consolidated and the Board moves to dismiss the complaints. Analyze and discuss all relevant issues, giving decision.

(b) In lieu of the judicial proceedings under (a), Adams prefers to leave his employment in order not to jeopardize his union status. After the appropriate waiting period, he files a claim for benefits and the matter is set down for a hearing. The X Manufacturing Company properly enters the hearing as a protestant against the allowance of benefits. To establish eligibility, Adams must show that he has been available for employment of a similar character and that he has actively and reasonably sought suitable employment. To establish these facts, Adams testifies that since leaving the employment of the X Manufacturing Company, he sought comparable work with seven other companies in the area but that in each instance there were no positions open or if there were, the employers maintained an open shop policy. Over the X Company's objection, the Board permitted Adams to introduce letters signed by the personnel directors of five such companies confirming the fact that Adams had sought employment. Three letters stated that no positions were open. Two stated that positions were open but that Adams had declined to accept employment. Nothing was said in these latter two letters about the reasons for refusal. After the hearing was concluded, an investigator of the Board called upon these latter two companies and the two companies from whom no letters had been received by Adams, and in each instance was told that the company maintained an open shop policy. This information was transmitted to the Board.

The Board entered an order granting benefits exclusive of the first week of unemployment and the nine additional weeks immediately following. It also reduced the total benefit amount under the formula of Section 10 by \$185.

Adams and the X Manufacturing Company both seek reviews under Section 20. In addition the X Manufacturing Company requests the court to conduct a de novo hearing.

Discuss ~~and~~ analyze the relevant issues offered by both Adams and the X Manufacturing Company, and give decision as to each.

2. In each of the following problems, state in less than 20 words the principal legal issue, and in less than 100 words, your decision and the reasons therefor.

(a) The Interstate Commerce Commission, pursuant to its powers of investigation, seeks to ascertain whether the Red Star Motor Service Corporation, certificated as an intrastate carrier under Illinois law, is engaging in the interstate transportation of property for which a certificate under the Interstate Commerce Act is required. It issues a subpoena directed to the president of the corporation, directing him to submit "all records pertaining to its transportation of property in commerce." The subpoena is ignored and the Commission, pursuant to law, files action in the district court seeking an order compelling compliance with the subpoena. The company files an answer stating it is engaged exclusively in intrastate commerce. It offers to prove, over the Commission's objection, that such is the case. The court permits proof, including the testimony of the five members of the Illinois Commerce Commission, to the effect that it has made an extensive investigation of the Corporation's total operations and has concluded, as of the week prior to this judicial hearing, that the Corporation is engaged exclusively in intrastate commerce. The District Court thereupon dismisses the Commission's action, holding that the Corporation is engaging solely in intrastate commerce. The Commission appeals to the Court of Appeals.

(b) A state statute authorizes the summary seizure and destruction of cigarettes which are fraudulently stamped or which contain neither valid state or federal stamps, and the summary seizure and sale of cigarette vending machines which contain such cigarettes, the proceeds of the sale to revert to the state. Pursuant to this authority, the state commission, acting upon a warrant, seizes a cigarette vending machine in the X Tavern. Adams, owner of the tavern and licensed by state law to sell cigarettes, files an injunction suit against the Commission and prays for a return of such cigarettes as are properly stamped and for return of the vending machine.

(c) A state statute regulating and licensing the sale of alcoholic liquor provides that the regulatory board, upon petition of any interested citizen, may investigate charges that a licensee is violating the law, and, if upon the basis of the investigation determines that grounds exist for the revocation of the license, to institute a proceeding for that purpose. A petition is filed and the Board investigates, in the course of which it holds a hearing at which considerable evidence is received pro and con on the issue of violation. Upon the conclusion of the hearing, the Board filed a "decision" which included a recital of the charge and a resumé of the evidence, and concluded: "No action to be taken on these allegations. Continue usual investigative procedure." The person who had filed the petition instituted a mandamus action to compel the Board to institute a proceeding to revoke the license of the person investigating^{ing}, alleging that the record of the hearing contained overwhelming evidence to establish the violations. The Board moved to dismiss the action.

3. Part I of the Interstate Commerce Act relates to rail carriers. Part III deals with water carriers. Part II regulates motor carriers of persons or property for hire. The Interstate Commerce Commission is authorized to regulate the rates of all three classes of carriers. As to rail and water carriers, the Commission is expressly authorized to entertain reparation proceedings in behalf of shippers who contend that the established rate is unreasonable. Shippers under Parts I and III may also seek to recover excessive charges in a federal district court under the Tucker Act, but in such cases the issue of unreasonableness of the rate is referred to the Commission for its decision. Part II contains no comparable authorization for reparation suits before the Commission or in the courts, but the Commission on its own motion or on the complaint of shippers may investigate and determine the reasonableness of the existing rates on file, and it may suspend for a period of seven months a new schedule of rates filed by a carrier pending its determination of reasonableness and may refuse to approve rates so determined to be unreasonable. Section 216 of Part II provides that "Nothing in this part shall be held to extinguish any remedy or right of action not inconsistent herewith."

Reference to legislative history discloses that on three separate occasions, 1949, 1952, and 1954, the Commission sought amendments to Part II which would have given shippers the same remedies as in Parts I and III, but on each occasion the House Committee, to which the bills were reported, recommended against passage.

On February 1, 1956, the Commission, without notice or hearing to any regulated carriers, filed in the Federal Register a general rule to the effect that effective April 1, 1956, it would hear and consider reparation claims filed by shippers under Part II. In its statement of reasons, the Commission declared that it was acting under its delegated authority to determine the reasonableness of rates, and that such rule was necessary to equalize the status of all shippers under Parts I, II, and III, and to prevent discrimination adverse to shippers under Part II. The Interstate Commerce Act provides for judicial review of final decisions affecting any person or carrier aggrieved by agency action.

(a) On April 10, 1956, 25 interstate certificated motor carriers file a combined action for declaratory judgment and injunction to declare the rule invalid and unenforceable. The district court overrules the Commission's motion to dismiss and on the merits holds the rule invalid. The Supreme Court grants certiorari.

Discuss the issues and give decision.

(b) Assume no action under (a). On September 1, 1956, a shipper institutes a reparation action before the Commission under Part II. The carrier objects to the jurisdiction of the Commission and challenges the validity of the rule. The Commission holds its rule to be valid and proceeds with the hearing. The Commission finds the rate charged to have been unreasonable though in conformity with the carrier's tariffs on file with it. The shipper then institutes action in the district court on the reparation order against the carrier, who moves to dismiss the complaint. The District Court dismisses the complaint and the Circuit Court of Appeals affirms this judgment. The Supreme Court grants certiorari. Give decision with special emphasis upon policy and legal issues other than the statutory power of the Commission to adopt the rule in question.

4. The Civil Aeronautics Act sets up a comprehensive scheme for the regulation of common carriers by air. Many statutory provisions apply without regard to whether the carrier is a foreign air carrier or a citizen air carrier, and whether the carriage involved is "interstate air commerce," "overseas air commerce," or "foreign air commerce," each being appropriately defined. All air carriers by similar procedures must obtain from the Civil Aeronautics Board (CAB) certificates of convenience and necessity by showing a public interest in the establishment of the route and the applicant's ability to serve it. However, when a foreign air carrier (defined as a "person not a citizen engaged in foreign air transportation") applies for a certificate, or a citizen carrier applies for a certificate to engage in any overseas or foreign air transportation, a copy of the application must be submitted to the President of the United States before hearing by the CAB; and any decision by the CAB, either to grant or deny, must be submitted to the President and is unconditionally subject to his approval or disapproval. In exercise of this power the President may, in addition, make modifications or alterations in the rights, privileges or conditions contained in the CAB's decision. The statute subjects to judicial review

"any order, affirmative or negative, issued by the Board under this Act, except any order in respect of any citizen or foreign air carrier subject to the approval of the President."

United Air Lines and TWA were rival applicants for certificates to engage in foreign air service to London, Paris, and Rome. Both carriers are citizen air carriers. The CAB heard the applications jointly (assume this may properly be done). Shortly after the termination of the hearings, the CAB advised the United Air Lines that it was recommending to the President the approval of TWA's application and the disapproval of United's application.

(a) United seeks judicial review, alleging that the findings in both applications are unsupported by substantial evidence, and that CAB had engaged in serious procedural errors which impaired the fairness of the hearing. TWA is permitted to intervene and by its pleadings supports the decision of the CAB. The Board moves to dismiss the petition for review, which the Court of Appeals denies. On the merits, the Court then finds the allegations of United relative to the Board's findings to be correct and remands the case to the CAB. The Supreme Court grants certiorari. Give decisions and reasons.

(b) Assume no action as under (a). The President modified the CAB decision re TWA by eliminating the authority to service Rome. He advised the Board of the changes he desired made. The Board complied and submitted a revised order and opinion which the President approved. With regard to the Presidential changes, the Board's decision stated "because of certain factors relating to our national welfare and security arrangements with foreign countries for which the Chief Executive has special responsibility, he has reached conclusions which require the changes noted in the Board's opinion." There was no disclosure by the President as to why he had made the modifications. United Air Lines now files its petition for review in form and substance as in (a). Same action by the Court of Appeals as in (a), and the Supreme Court grants certiorari. Give decision and reasons. Discuss in terms of pre- and post-Administrative Procedure Act.

5. Answer each of the following questions T (true) or F (false) in the examination booklet.

1. Under the Illinois Administrative Review Act uniform procedures respecting the adjudicatory process are applicable to all administrative agencies where the act creating or conferring power upon the agency adopts the provisions of the Review Act by express reference.

2. The Federal Administrative Procedure Act provides that a hearing and the notice and other procedural requirements of that Act shall apply to all adjudicatory proceedings of agencies unless the APA exempts the agency or the particular proceeding from its applicability.

3. In federal proceedings, the doctrine of exhaustion of administrative remedies will generally not be applied where the sole issues in controversy embody questions of law.

4. The federal substantial evidence rule permits a reviewing court to affirm administrative findings of fact, notwithstanding that the ~~substantial~~ preponderance of evidence in the whole record is contrary to such findings.

5. Where certiorari is an appropriate review remedy, its scope extends to a review of questions of law and fact.

6. The immunity of the State of Illinois from suit is a matter of legislative grace.

7. Constitutional due process requires judicial review of all agency action affecting persons or property.

8. Legislative authorization expressly delegating power to administrative agencies to define conduct in violation of the act as penal and to define and prescribe the penalties for such conduct is generally held valid.

9. Notice and trial type hearing in adjudicatory action of an agency may be dispensed with by the legislature whenever it declares that the public interest and welfare so requires.

10. The doctrine or rule of necessity prevents disqualification of an agency even though personal bias and hostility of a generally disqualifying character exist.

FINAL EXAMINATION IN ADMIRALTY (Law 343)

Summer Session 1959

Professor Davis

TIME ALLOWED: THREE HOURS

Instructions: The casebook for this course (Morrison & Stumberg, "Cases and Materials on Admiralty") may be used freely during the examination. No other materials are authorized.

1. Shipper delivered a quantity of baled cotton, worth \$50,000, on board the steamer Aquamarine at Mobile, Alabama, for carriage to Providence, Rhode Island. The Aquamarine and the tug Stonewall Jackson, worth \$200,000 and \$10,000 respectively, were owned by the Atlantic & Gulf Steamship Company. Other cargo loaded aboard for the Mobile-to-Providence voyage was worth \$150,000. Shipper received a bill of lading signed by the master of the Aquamarine acknowledging receipt of the cotton for transportation to Providence and containing the so-called "Jason" clause. While the ship was navigating out of Mobile Harbor, assisted by the Stonewall Jackson, she ran hard aground in consequence of the concurrent negligence of the masters of both vessels. To get the Aquamarine off, the Atlantic & Gulf Steamship Company was obliged to unload and reload a considerable part of the cargo, including all of Shipper's cotton. In the process a part of the cotton got wet. The Atlantic & Gulf Steamship Company spent \$3,000 in drying Shipper's cotton, and \$12,000 in lightening, floating, and reloading the cargo. On arrival at Providence, the Atlantic & Gulf Steamship Company refuses to deliver the cotton unless Shipper pays \$5,000 in addition to the agreed freight. Shipper consults you. Advise him concerning his rights and any practical action that he may take.

2. During a storm on the high seas the tanker Petroil broke in half, leaving the master and nine men on the forward, and thirty-nine officers and men on the after part. The armed merchant vessel American Sportsman responded to a wireless SOS from the forward part of the Petroil, came alongside, took off the master and men, and sank the forward half of the Petroil by gunfire. After a search of several hours, the American Sportsman found the after part of the Petroil and, at the request of the latter's master, put him and his nine men aboard what was left of the Petroil. The American Sportsman then passed a line and proceeded to tow the Petroil stern-first, with the aid of the Petroil's own engines, into port. This voyage lasted ten days, covered 900 miles, was interrupted by six breaks in the tow-hawser, and required great exertion and hardship on the part of everyone concerned. Encountering fog fifteen miles off her proposed port of refuge, the American Sportsman cast off the Petroil with the intention of finding a buoy and then returning to take up her tow. During her absence the Petroil, navigated by her own crew stern-first and in violation of the fog rules, collided with and sank the ship Coney Island. The Coney Island had just cleared the port for which the Petroil was headed, and the former had not given whistle blasts as required by the fog rules. The whistle was inoperable because of dirt-clogging.

The owners of the Coney Island now libel the Petroil for damages. The American Sportsman libels the Petroil and her cargo for salvage. The master and crew of the Petroil libel her and her cargo for salvage. The crew of the Petroil libel her for wages. The Coney Island was worth \$100,000 before sinking. There is \$5,000 in wages due the Petroil's crew. The after half of the Petroil is sold by agreement for \$90,000, which is paid into court. The cargo of the Petroil is sold by agreement for \$25,000, which is paid into court. No freight is due.

Write the opinion of the court distributing the funds in hand.

3. On the evening of December 5, 1958, the motor vessel Tungus docked at Bayonne, New Jersey, with a cargo of coconut oil in her deeptanks. El Dorado Oil Works had been engaged by the consignee to handle the discharge of this cargo, and for the next several hours the work of pumping the oil ashore was carried on by El Dorado employees, using a pump and hoses furnished by their employer. Two officers and two seamen of the Tungus remained aboard in overall control of the vessel and to assist in the discharge operations. Shortly after midnight the pump became defective, resulting in the spillage of a large quantity of oil over the adjacent deck area. The pump was stopped and the oil cleaned from its immediate vicinity. Efforts to restore the pump to normal operation were unsuccessful, and Carl Skovgaard, an El Dorado maintenance foreman, was summoned from his home to assist in the repair work. After arriving on board he walked through an area from which the spilled oil had not been removed. In attempting to step from a hatch beam to the top of the partly uncovered port deeptank, he slipped and fell to his death in eight feet of hot coconut oil.

Your firm has been retained by Skovgaard's widow, and your senior partner requests a memorandum concerning the widow's legal rights and remedies, if any. See The Tungus v. Skovgaard, 79 Sup. Ct. 503 (Feb. 1959).

4. Plaintiffs, having sold and agreed to deliver certain goods to a Spanish company, arranged for their ocean carriage on the S.S. Ampudia from Baltimore, Maryland, to Valencia, Spain. The goods, consisting of 62 cases, were transported from Detroit by flatcar to a point on the Baltimore pier alongside the Ampudia and were there taken in charge by the vessel's agent for loading and shipment. A bill of lading was signed by the agent and delivered to plaintiffs. The value of the goods was not declared by plaintiffs or inserted in the bill. Defendant, an independent stevedoring company, was orally engaged by the ship's agent to load the cargo. While moving one of plaintiff's cases, containing a press weighing 19 tons, across the deck of the ship, defendant's employees negligently caused it to fall into the harbor. The resulting and provable damage is \$48,000.

Plaintiffs now sue defendant in admiralty for the full amount of the damage. What decision? Cf. Herd & Co. v. Krawill Machinery Corp., 79 Sup. Ct. 766 (April 1959).

5. Passenger disembarked at New York at the end of his voyage aboard the passenger liner Lorelei. While waiting for customs inspection, he walked along the pier to watch the unloading of cargo and wandered into a roped-off area plainly marked "KEEP OUT." While there he was injured as a result of the negligent loading of a cargo sling. The causal act of negligence was that of a longshoreman employed by the Lorelei and occurred on shipboard.

Passenger now brings a libel in personam against the owners of the Lorelei to recover for his personal injuries. What decision?

End of Examination

FINAL EXAMINATION IN BANKRUPTCY (Law 344)

Second Semester 1959-1960

Professor Looper

Instructions: Total time on this examination is two (2) hours. There are four questions. It is suggested that you allocate about 40 minutes each to Questions 1 and 2, and about 20 minutes each to Questions 3 and 4.

1. (a) B was adjudicated a bankrupt at the age of fifty. On the filing of the petition, B had the following:

1. An endowment insurance policy payable to him at the age of sixty, and if he should die before that time, payable to his wife.
2. A remainder in Blackacre. That estate had been devised to X for life, remainder to the children of Y who should be living at X's death. B is one of several living children of Y. X is still living.
3. A right of action for wrongful discharge from a contract of employment.
4. A right of action for damages for deceit.

(b) After the filing of the petition, but before adjudication, B, while in the exercise of due care, was injured and his automobile damaged in a collision with C, who was negligent.

What are the rights of B's trustee in bankruptcy in the above?

2. An involuntary petition in bankruptcy was filed against B on December 31, 1959, and B was duly adjudicated a bankrupt on May 1, 1960. During the year 1959 the following events transpired:

1. In early January B became unable to pay his debts as they matured. Up to January 15, however, his assets continued to exceed his liabilities by about \$5,000. On January 15 B deeded a piece of rental property worth \$7,000 to his wife. This transaction produced an excess of liabilities over assets of \$2,000. B's balance sheet position did not improve during the rest of the year.
2. On July 15 B selected among his creditors his old friend Neff and paid him his \$10,000 claim in full. At the time Neff knew that B was insolvent.
3. On September 5 Garage acquired a mechanic's lien on B's car.
4. On September 30 B went to Mitchell to whom he owed a debt of \$30,000, which was secured by a first mortgage on property then worth \$25,000. Under threat of foreclosure, B paid Mitchell \$10,000 on account.
5. On December 30 Neff loaned \$50,000 to B, taking as security an assignment of \$100,000 of accounts receivable. At the time Neff knew B was hopelessly insolvent.

You are called upon by the trustee in bankruptcy to advise as to which of the above transactions can be successfully attacked and how.

3. A state law provides that when any domestic business corporation is insolvent in the sense of inability to pay debts as they mature, or is guilty of certain scheduled offenses, or being a non-moneyed corporation has less assets than liabilities, on petition of the Attorney General or of any creditor having a claim of \$100 or more, a receiver shall be appointed, who shall wind up the corporation. Against such an involuntary petition, it is moved to dismiss on the ground that the state law is suspended by the Federal Bankruptcy Act. What decision?

4. The following questions are short-answer items. Full credit will be given for unexplained categorical answers under all items but (d) and (e). You may, if you have doubts, explain others.

(a) Which acts of bankruptcy are entirely independent of insolvency?

(b) Which acts of bankruptcy require insolvency "in the bankruptcy sense"?

(c) Which acts of bankruptcy involve insolvency defined otherwise than as defined in Section 1 of the Bankruptcy Act?

(d) Give an example of a transaction defeasible in bankruptcy that is not an act of bankruptcy.

(e) Give an example of an act of bankruptcy that is not a voidable transaction.

(f) What are the requirements of a petitioning creditor?

(g) What persons are amenable to involuntary bankruptcy?

IMPORTANT: Do not write your name on either the question sheet or the examination booklet. A sheet will be passed around, listing each member of the class. Please write your examination number in the space after your name.

DIRECTIONS: You will have 3 1/2 hours for this examination. You are restricted to two pages for the first question and one page for each of the other six questions. Nothing beyond this page limitation will be graded. Please write plainly. Answer these questions on the basis of the Uniform Negotiable Instruments Law and the general American case law interpreting this act.

1. (2 pages) The following statute is §3-304 of the Uniform Commercial Code: Section 3-304. Notice to Purchaser.
- (1) The purchaser has notice of a claim or defense if the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay.
 - (2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.
 - (3) The purchaser has notice that an instrument is overdue if he has reason to know
 - (a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or
 - (b) that acceleration of the instrument has been made; or
 - (c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty days.
 - (4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim
 - (a) that the instrument is antedated or postdated;
 - (b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;
 - (c) that any party has signed for accommodation;
 - (d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;
 - (e) that any person negotiating the instrument is or was a fiduciary;
 - (f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

Comment briefly on how the enactment of this section would affect the existing law of negotiable instruments in states where the UNIL is still in effect. In your answer point out in what respects §3-304 would change the existing law and in what respects it merely restates it.

2. (1 page) Discuss briefly the effect on negotiability that each of the following clauses alone would have on an otherwise negotiable instrument:

(a) "We promise to pay to bearer \$100, one year after date. Value to be received in store rent for store No. 443 Camp Street, as per lease of this date."

(b) "It is understood that the signer of this instrument is not personally liable and that this instrument is payable solely out of trust funds.

(Signed) John D. Davis, Trustee
Davis Investment Trust"

(c) "In lieu of the payment of the aforementioned sum of money, the holder of this instrument may have the option to accept the maker's race horse, Nadir, in discharge of this obligation."

3. (1 page) M made a promissory note on January 1, 1958, to P, payable six months after date, in payment of the price of machinery to be used by M in his factory. P refused to accept the note and advance the goods until M was able to prevail upon his rich uncle, A, to sign his name at the top of the back of the instrument. After A signed the note, P discounted it with B Bank on January 15. M was unable to pay the note upon maturity and, after due presentment and notice of dishonor, A paid the note. A now sues M on the note which was surrendered to A when he paid B. Can A recover? Explain.

The following section of the UNIL is relevant:

Section 121. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is re-mitted to his former rights as regards all prior parties and he may strike out his own and all subsequent indorsements and again negotiate the instrument, except:

(1) Where it is payable to the order of a third person, and has been paid by the drawer; and

(2) Where it was made or accepted for accommodation, (and) has been paid by the party accommodated.

4. (1 page) Mary was payee of a negotiable promissory note made to her order for value by Michael. Her cousin Harriet fraudulently induced Mary to indorse the note in blank and deliver it to her in payment for some securities which Harriet well knew were worthless. This delivery took place one week after the note became due. Harriet indorsed the note in blank and quickly sold it to Harold, who paid value without actual notice of any defenses of any nature to the note. When Mary learned of the fraud, she sued to recover the note from Harold. What result? Why?

5. (1 page) M, 20 years of age, made a negotiable note to "P or bearer" for \$100, on January 1, 1958, in payment of a new power lawn mower. The note was due on May 21, 1958. P handed the note to A on January 10, without indorsing it. A indorsed the note "without recourse," signed his name below, and delivered it to B on February 15. Ten days later B indorsed the note "Pay to C," signed his name below, and delivered it to C. On March 1, C wrote across the back of the note, "I assign this note to D," signed his name below, and delivered it to D, a purchaser for value without notice.

(a) Assume that upon maturity there was proper presentment and notice of dishonor. What are the rights of D against M, P, A, B, and C? Explain.

(b) Assume there was no presentment. What are the rights of D against M, P, A, B, and C? Explain.

6. (1 page) A fraudulently induced M to purchase a worthless power mower and took from M in payment a promissory note for \$100, regular and negotiable in form but for the fact that the instrument was blank as to the payee's name. A had specifically requested that M leave the payee's name blank. A's reason for this request was that he wanted to avoid any liability on the instrument; however, he did not tell M the reason for his request. A sold the instrument still blank as to the payee's name to B for value, before maturity. B had no notice of any defenses on the instrument. B sold the instrument to C, who also took for value, without notice, and before maturity.

- (a) Suppose at the time of the sale of the note to C, B, in the presence of C, filled in A's name as payee. What are C's rights against M, A, and B? Assume due presentment and notice of dishonor.
- (b) How would your result in (a) change if B had filled in his own name instead of A's?
- (c) How would your result in (a) change if B had filled in C's name instead of A's?

7. (1 page) P forged David's name as drawer of a check drawn on Drawee Bank for \$100 payable to order of P. P indorsed the check in blank and delivered it to X, who thereupon deposited it in B Bank. B stamped on the back of the check, "Pay any Bank, Banker, or Trust Company, All Prior Indorsements Guaranteed, (signed) B Bank," and sent the instrument to the Drawee Bank for payment. Payment was received in due time. You may assume that neither Drawee nor B Bank knew of the forgery until the depositor later discovered it.

- (a) Suppose Drawee sued B to recover the amount paid out on the forged check on the theory that B by indorsing the instrument warranted its validity. Should Drawee recover on this ground? Explain.
- (b) Suppose X knew of the forgery when he took the check. If this fact could be proved, could Drawee recover from B Bank if the latter had paid out (1) the full amount of the check to X? (2) none of the check to X? Explain.

MAXIMUM TIME: 3 1/2 HOURS

1. (Suggested time: 40 minutes) The following check was drawn by John Doe and delivered to Daniel Dealer:

Champaign, Illinois, September 1, 1959

SECOND NATIONAL BANK

FAY TO THE ORDER OF Daniel Dealer \$ 600.00Six hundred and no/100ths dollarsJohn Doe

Dealer's salesman and branch manager Barker had no authority to cash Dealer's checks, but nevertheless he picked it up, forged Daniel Dealer's indorsement, received the cash from the Mudville Bank, which sent the check for collection to Federal Bank (Chicago), which collected from the Second National Bank and remitted to the Mudville Bank. Indorsements by the Mudville Bank and the Federal Bank were in the usual form, "Pay any bank, banker, or trust company, prior indorsements guaranteed."

What are the rights between the following parties:

- a) Second National Bank and Mudville Bank?
- b) Second National Bank and Federal Bank?
- c) Second National Bank and John Doe?
- d) Daniel Dealer and Second National Bank?
- e) Daniel Dealer and Mudville Bank?
- f) Daniel Dealer and Federal Bank?

If you think there are additional facts or factors (unmentioned but consistent with the above statement of facts) which might affect the rights of the parties, please note them in your discussion.

2. (Suggested time: 30 minutes) M, as consideration for an illegal gambling debt, wrote his 30-day negotiable note to P, the operator of a large gambling establishment in northern Illinois, in the sum of \$1000. P indorsed the note in consideration of restaurant equipment sold by X to P. X, on the day of maturity of the note, sold it to Y for value but failed to indorse to Y. Neither X nor Y had actual notice of the nature of the transaction relating to the issuance of the note by M to P.

- a) Can Y recover from M? Would your answer be different if the note were executed and payable outside of Illinois?
- b) Suppose instead of taking without indorsement, Y had received delivery of the note and X's indorsement before maturity. Y gave value and had no notice at the time of negotiation of the transaction out of which the original issuance of the note arose. In a state where gambling is considered only a personal defense, does M have a defense against Y if X defrauded P? If you can not answer definitely, upon what additional factors might your answer depend?
- c) Suppose that M when asked to pay has actual notice of a claim by P that

X procured P's negotiation of the note by means of material and fraudulent misrepresentations. Is a payment by M to X or Y good? What should M do?

3. (Suggested time: 30 minutes) Matthews, service station owner, bought his oil and gas from Penny, a wholesale distributor. While out of town for a week, Matthews left his trusted employee, Abscon, in charge of his business and left with Abscon a negotiable promissory note in the sum of \$100 signed by Matthews and payable to the order of Penny, dated April 2, 1960, and payable thirty days from date. Abscon was supposed to deliver the note to Penny on account of the week's supply of oil and gas, which came to a few dollars more than \$100. Abscon skillfully raised the note to \$200, and then took the note to Penny and stated that Matthews wished to borrow \$200 for his trip and would catch up on his account for oil and gas delivered upon his return to town the next week. Penny, who had known Abscon and the fact of his employment by Matthews for several years, and had done business with Matthews for many years gave Abscon the \$200 against the note. Abscon promptly left town, never to return. On May 10, 1960, Penny indorsed the note to Holden for \$190. Holden took the note in good faith and without any suspicion that there might be anything wrong with it. On May 11 Holden presented the note to Matthews, who refused payment. Discuss the rights of Holden against Matthews.

4. (Suggested time: 40 minutes) On June 12, 1956, Dr. W. Willson executed the following instrument:

June 12, 1956

On or before twelve months from date I promise to pay to the order of Illinois Elevator Company the sum of twenty-five hundred dollars with 6% interest until paid.

This note is in payment of 25 shares of capital stock in Illinois Elevator Company.

This note shall become due and payable on demand at the option of the payee when it deems itself insecure.

This note is secured by a mortgage of even date, and for a description of the mortgaged property and the nature and extent of the security, reference is made to the mortgage, to all of the provisions of which this note is subject.

In the event of default of this note, I authorize any attorney of record in Illinois to appear for me and confess judgment for the said sum, together with costs of collection.

(Signed) W. Willson

To procure the note from Willson, the Treasurer of the Illinois Elevator Company, whose name was Ellis, represented that \$100,000 in capital stock had already been paid up and that the company was already in operation. In fact nothing had been contributed to the stock of the company, and it had never done any business, although it was incorporated.

One month after the above note was delivered to Ellis for the corporation, Ellis

as the officer authorized to sign the name of the corporation indorsed for the corporation to the First National Bank, and received from the First National Bank a credit for \$2500 to Ellis's personal account in that Bank. Ellis shortly withdrew the full amount.

Two months later the First National Bank demanded payment from Dr. Willson, who refused because he had discovered the fraud by Ellis. Then the First National Bank brought suit on the note against Willson, introduced the note, and rested. Dr. Willson introduced adequate proof of the fraudulent representations by Ellis. Does the First National Bank have a chance to recover, and if so, what must it establish?

SHORT ANSWER QUESTIONS

5. (Suggested time: 25 minutes) Answer the following questions in your examination book in 50 words or less.

- a) Why have banks used the indorsement form, "prior indorsements guaranteed"?
- b) Why have some banks been reluctant to certify a check at the request of the holder?
- c) Why have some banks been reluctant to certify a check at the request of the drawer?
- d) Why is it not strictly accurate to state that the statute of limitations runs against the drawer of a check from the date of the instrument because it is payable on demand?
- e) Sections 87 and 137 of the NIL were completely omitted in the Illinois version. Section 87 deals with instruments payable at a bank; Section 137 deals with drawee's acceptance by destruction or refusing to return a bill presented for acceptance. Why in your opinion did Illinois omit these two sections?

6. (Suggested time: 40 minutes) A. Explain the changes, if any, which the Uniform Commercial Code would make in the following NIL provisions (as printed in your pamphlet entitled "Laws of Illinois Relating to Negotiable Instruments"). Limit your answer to 50 words or less for each subdivision.

- a) Section 9, Subsec. 3
- b) Section 4, Subsec. 3
- c) Section 10
- d) Section 15
- e) Section 71
- f) Section 188 (g)
- g) Section 9, Subsec. 5

B. Which of the above Illinois sections or subsections change the unamended Uniform Negotiable Instruments Law to be found in the majority of states, and what are the changes? Limit your answer to 50 words or less for each subdivision.

FINAL EXAMINATION IN BUSINESS ASSOCIATIONS (Law 32C)

First Semester 1958-1959

Professor Frampton

This is a three-hour examination. There are four (4) questions of equal weight. Where a question is divided into two or more parts, the weight given to that question is divided equally among the parts. Allocate not more than 45 minutes to a question.

Begin the answer to each question on a new page. Place your examination book number, with a circle around it, at the beginning of each answer to each question, and place the question number after it. Example: A student assigned book number 66 would begin the answer to question 3:

(66) 3.

Do not write anything on the cover page of the examination book except the information called for in the boxed blanks at the top of the cover page. Write legibly in blue or black ink. Write on both sides of the pages.

No credit is given for length. Since credit will be given for conciseness and organization as well as for seeing and discussing the legal problems suggested by the facts, it follows that unnecessary length will affect your mark adversely.

Do not turn this page or begin the examination until instructed to do so.

When you have finished the examination, or when time is called, whichever is sooner, turn the cover page of the book back so that the name does not show, and hand the book in with the beginning of the answer to question #1 face up. You may keep or discard the examination questions.

1. Paul Pratt, doing business under the name of I'll-Truck-4-U Leasing Company, owned a fleet of trucks which he normally leased with drivers for heavy construction work. Since little construction work is done Saturdays, Pratt occasionally allowed a driver to supplement his five-day-week wages by taking a truck to earn side-money. Pratt required only that the driver have the truck in by 6 p.m., pay for his own gas, and pay Pratt two cents a mile, to cover non-gas costs of operating the truck, plus 2% of his gross receipts. One Saturday morning Al Awn, a driver, took a Pratt truck pursuant to the above understanding and solicited trucking to the county fair. The truck was conspicuously marked T-4-U. At Tom Todd's farm Awn took on a load of sensationally large and choice turnips -- Todd's entire supply of that strain -- for which Todd had every reason to expect to win a \$500 gold prize. Todd asked for security for the safe transportation of the turnips, whereupon Awn wrote the following note to Todd: "Upon failure to deliver your turnips safely at the county fair on today's date, we promise to pay you \$250. (signed) I'll-Truck-4-U Co., by Al Awn, Authorized Driver." Awn thereupon set off at an exhilarating speed, careened across a narrow bridge, striking and injuring Timothy Tad, who was fishing from it, and catapulting the truck into the river, to his own serious injury and the complete loss of the truck and turnips. Pratt asks you what are his probable rights and liabilities arising out of this situation. Advise him.

2. Uncertainty resulting from recent court decisions has led Senator Ale, of your state, to introduce the following bill in the legislature (S.B. 1):

"Every member of any association not incorporated shall be subject to liability for the contracts executed or torts committed by any agent thereof as though the association were regarded and treated as a corporation."

Senator Car has introduced a bill (S.B. 2) similar in all respect to S.B. 1 except that the language after the word "thereof" in S.B. 2 reads "as though the association were a partnership as defined in the Uniform Partnership Act." These bills have been referred to the Committee on Business Legislation, of which you are counsel. The committee members include some lawyers and some non-lawyers. Prepare a brief memorandum for their use:

- (a) Explaining how each bill would affect existing law, if at all; and
- (b) Giving your opinion of the bill and its possible effects, with reasons; and if you do not favor one of the two bills in its present form, suggesting what changes in either bill could avoid some or all of the problems you believe might be created by enactment in its present form.

3. Ab Awk, intending to act for Pat Par, whom he had not previously represented, approached Ted Tull, without Par's knowledge, about purchasing a carload of top grade de luxe widgets on 10 days' credit terms. Tull said, "For whom?", and Awk, fearful that Tull would jack up the price if he knew that Par, a well-known millionaire, was "in the picture," shrugged and said, "Well, for someone, of course, but what difference does it make?" Tull also shrugged and they then entered into a contract for the purchase of the widgets for \$5,000, Awk signing it, "Ab Awk." When Par learned that Awk had intended to act for him and realized that the widgets would sell easily for \$7500, he supplied Awk with \$5,000 to perform the contract.

Assume, (1), that Tull discovered, on the day before the performance date under the contract, that he could easily get \$7500 for the widgets. Tull suggested to Awk that Awk should in good conscience reduce his potential profit. Awk by this time was temporarily short of cash and had even responded to his hard-pressing personal creditors with Par's \$5000. He told Tull that he had intended to act for Par, although without Par's knowledge, and suggested that any further discussions might have to be held with Par. Tull, outraged, told Awk he would not perform an unconscionable transaction in which he had been "defrauded," as he put it, about the identity of the other party. Tull asks you whether he has any liability to Par. Advise him, giving the basis for your advice.

Assume, (2), that the bottom dropped out of the widget market on the day before the performance date under the contract. Awk then told Tull the widgets were for Par. Tull said, "Good, that means I'm sure to get my money despite recent developments. I'll deliver, and look only, to Par. You give no further thought to the matter." It was then that Awk used Par's \$5000 to satisfy Awk's personal creditors. Par denies ever having had any dealings with Tull and states that he does not trust him or the quality of his widgets, and that he would never have agreed to such short credit terms. He states alternatively that he has already paid for the carload. Advise Tull as to all his rights.

4. Ben Bar made available to Amos Arc, an inventor, \$10,000 with which to make a prototype Whirlitoy Rocket that could be launched easily and safely and could be directed in flight. The model would embody and disclose the basic idea which, when made practicable, could be later covered by patent rights in the name of the owner. It was understood that if the rocket were practicable, Arc and Bar would share 50-50 the proceeds from its sale by either one. Arc employed Carl Cott to launch the rocket, which he did successfully at high noon, except that it landed on Dan Down's farmhouse, damaging the roof. Arc telephoned Bar within the hour to tell him of the success. Arc forgot to mention the details of the landing or that the Hot Toy Company had indicated an interest in paying \$20,000 for Whirlitoy if it got off the ground. Arc asked Bar if he would care to sell out his half to Arc for \$7500, and Bar agreed to do so. The necessary papers were signed that afternoon at 3 p.m. That evening at 7 p.m. Arc made a sale of Whirlitoy to Hot, delivered the model, and received payment. Meanwhile, late that afternoon, Bar heard of Hot's interest and also the interest of Coldspot Electrical Toys, Inc. In anger at Arc for moving so fast, Bar sold Whirlitoy to Coldspot at 5 p.m. for \$21,000, received their check for that amount, and promised delivery of the model the next day. Discuss and evaluate briefly all the probable rights of Arc, Bar, Coldspot, Down, and Hot, indicating in each case against whom these rights could be asserted.

FINAL EXAMINATION IN BUSINESS ASSOCIATIONS (Law 320)

Summer Session 1959

Professor Frampton

This is a three-hour examination. There are four (4) questions of equal weight. Where a question is divided into two or more parts, the weight given to that question is divided equally among the parts. Allocate not more than 45 minutes to a question.

Begin the answer to each question on a new page. Place your examination book number, with a circle around it, at the beginning of each answer to each question, and place the question number after it. Example: A student assigned book number 33 would begin the answer to Question 3: (33) 3.

Do not write anything on the cover page of the examination book except the information called for in the boxed blanks at the top of the cover page. Write legibly in blue or black ink. Write on both sides of the pages.

No credit is given for length. Since credit will be given for conciseness and organization as well as for seeing and discussing the legal problems suggested by the facts, it follows that unnecessary length will affect your mark adversely.

Do not turn this page or begin the examination until instructed to do so.

When you have finished the examination, or when time is called, whichever is sooner, place the examination paper in the back of your answer book, turn the cover page of the book back so that the name does not show, and hand the book in with the beginning of the answer to Question #1 face up.

1. Paul Prim purchased a large house on August 1. Not wishing to be identified with renting rooms, he engaged Al Able to manage and operate for him a boarding house, to be called "The Requite-Inn," in consideration of free rent for a suite for Able. Prim instructed Able not to mention Prim's name, to rent rooms for not less than \$60 a month, and to do whatever was necessary to keep the house running and in good repair. On September 1 Able rented two rooms, one to Tom Tad and one to Tim Trent, for nine months at \$40 a month per room. The rental arrangements were evidenced by two identical memoranda: "The undersigned agree to rent a room at the Requite-Inn for nine months from September 15 for \$40 a month." Tad and Trent each signed his respective memorandum individually and Able signed both memoranda, "Al Able for the Requite-Inn." On September 2 Tad said to Trent, "I've found a better place and since I learned today that Able wasn't supposed to rent to us for \$40 anyway, I'm withdrawing from the Requite-Inn arrangement." On September 3 Able truthfully told Prim he feared he could not get more than \$40 and had rented the two rooms accordingly. Prim said, "In view of how you view rental conditions, I guess maybe that will be all right." On September 5 Prim learned he could rent the rooms for \$65 a month each and disavowed the rentals as unauthorized. Both tenants wish to occupy. What are all the rights and liabilities of all the parties?

2. Sam Stall saw an opportunity to make a profit in the prompt trucking and re-sale of a bumper crop of melons in Honeyloup County. He borrowed \$1,000 from Ben Bagg, a wealthy landowner, on the understanding that Bagg would be repaid by receiving one-third of the profits after deducting all costs, and that Stall and Bagg would agree on the volume of melons to be trucked, principal routes, and re-sale prices. Stall engaged Art Apt, a Honeyloup farmer who then had some extra time, and Apt's truck, for a fee to be based on time and mileage. The truck was marked, "The Apt Farms." Stall gave Apt \$500 with which to buy melons for cash and told him where to buy them and where to sell them. Apt bought \$500 worth of melons on credit from Tobias Trott and others, trucked them to a city 200 miles away, and sold them for \$750 to buyers designated by Stall. On the way back Apt and his wife, who was with him, saw a sign pointing to "The Melon Man - 3 Miles," and detoured off the main road to investigate the Melon Man's melons, prices, and credit terms. On that detour Apt's wife, who was driving because of Apt's exhaustion, negligently struck and killed Homer Hap.

(1) The executor of Hap has brought an action for wrongful death against Bagg. As judge in that action, write an opinion disposing of the one or more issues, if any, that you would not submit to the jury, and charge the jury on the one or more issues, if any, that you would submit to it.

(2) Trott has brought an action against Stall for the sale price of melons delivered to Apt. Advise Stall as to his probable liability in this action, as to any concern or interest he should have in the action of Hap v. Bagg, and as to any rights he may have against anyone arising out of these actions.

3. Ambrose Awk and Bert Boar, Jr., are partners in the firm of Bert Boar and Son, which is engaged in the custom tailoring of clothes. Awk's participation in the financing and management of the business is not generally known. On August 1 Bert, with partnership funds, purchased ten bolts of fine linen for \$1,000 and sold and delivered them to Tubb, Inc., linen factors, in satisfaction of a personal obligation which he owed them. Talbot Tisk, a new Tubb buyer, examined the bolts at the time of delivery and before Bert was released from his obligation, and he noticed a defect in the linen which had occurred during recent handling, but

he did not mention it to his superiors. Had he described the defect to them, they would have known that the linen was worthless, a condition not brought home to them until an action was brought against Tubb, Inc., on August 15 by a purchaser from it. On August 10 Awk, while checking into firm matters, discovered the linen transaction and the fact that Bert was insolvent, and he promptly dissolved the partnership. The president of Tubb, Inc., asks you what his company's rights and liabilities are.

4. Bye-Syk, Inc., is a corporation duly incorporated to make and sell bicycles and motorcycles. Saul Syk is the principal shareholder, president, and one of five directors. The by-laws provide that the president "may borrow money and do all other acts necessary to carry on the usual and normal business of the corporation, and may exercise any authority that can be delegated to him by the board of directors," and the directors by resolution have authorized Syk to sign company checks. On June 1 Syk borrowed \$10,000 from Toby True on a 30-day note to True as payee. The note was signed, "Saul Syk, President, for Bye-Syk, Inc." The money was used to make a down payment on a 100-acre summer campsite near a lake. When the note became due, Bye-Syk, Inc., was in sufficient funds to enable Syk to pay part of the note by a check for \$2,500 on the corporation and to get an extension of thirty days on the remaining \$7,500. Two days later, at the annual shareholders' meeting, the shareholders adopted a resolution which provided that they "expressly ratify and confirm all directors' acts made or taken since our last meeting." On default of payment, outline and evaluate the principal points in the briefs of all the parties in an action by True for \$7,500 with interest against Syk and Bye-Syk, Inc.

FINAL EXAMINATION IN BUSINESS ASSOCIATIONS (Law 320)

First Semester 1959-60

Professor Stephens

Time Limit: 3 hours

This three-hour examination consists of five questions, all of equal weight for grading purposes. You will have a little more than half an hour for each question, but do not let this encourage you to write unduly long answers; no credit will be given for mere length, and an answer that is long because of poor analysis or faulty organization will be graded down. Try to deal concisely with all the issues genuinely present in each question.

1. Phil Potts, as a sole proprietor, operated a wholesale egg distribution business, purchasing fresh eggs from scattered farmers; candling, cleaning and boxing them; and delivering them to retailers at a fluctuating price. When his business had grown some, he engaged Al Apt to help in the purchasing end of the business. Al's job was to purchase for Phil between 80 and 100 cases of eggs per week at the best price available; he was to pay cash for the purchases and Phil set up a limited checking account for Al to facilitate his purchases. Al was furnished a panel truck decorated with a sign "Potts Perfect Eggs" for use in his purchasing work, but it was agreed that Al would continue in his position as assistant manager of the local bowling alley, fitting his purchasing activities into time left free by his other duties. On one purchasing excursion Al found that farmer Taft was willing to enter into an agreement to sell Potts ten cases of eggs each week at \$4.00 per case, slightly above the going rate, if an agreement at that price could be made for a period of six months. Taft misunderstood Al's hesitation to sign an agreement, and told him there was five cents a case in it for Al himself if he would make the deal. Al accepted and signed an agreement with Taft for Potts, executing the agreement, "Phil Potts by Al Apt, agent." When Al showed Potts the agreement, Potts said: "That's great; suppliers are scarce, and this will at least assure us of ten cases a week." In the following week the price of eggs dropped drastically. Moreover, Al, on his round of egg collections, was killed in a head-on collision with Terry Tutt when Al's excessive speed prevented his panel truck from taking a curve. Farmer Taft is asserting his rights under the egg contract, and Al Apt's widow and Terry Tutt are threatening Potts with suits for death and injuries in the collision. Advise Potts concerning his rights and obligations.

2. A speculative builder constructed three small adjoining stores on a lot in a good business district. Pat Pants purchased one store and opened up a men's clothing business, at first selling only suits, coats, and similar apparel. The other stores were purchased by Ted Tall and Tom Teek, who, respectively, established a men's furnishings and a dry cleaning establishment. Only Pants was successful, and he expanded his operation to include merchandise competitive with Tall and a connection with another local cleaner that put him in competition with Teek. As the need of Pants for more space grew, the ill will between him and his neighbors grew even faster. Pants wanted the other stores but feared being held up on price by the other owners. Therefore he telephoned Arty Ants, a licensed real estate broker, and later gave him written authorization to purchase the properties for him. In negotiations between Ants and Tall, Tall asked, ungrammatically: "Who are you acting for?" Ants replied: "Someone, but what's the difference?" Tall did not press the point further. Teek, on the other hand, said: "Are you buying for that scoundrel Pants?" In a flash Ants thought he saw a big chance; he would buy both properties on his own and then undertake to hold up Pants himself. Accordingly, he answered: "No." Ants executed a contract in writing with both Tall and Teek

for the purchase of each piece of property at \$15,000. Now, learning of space in a new building to be constructed across the street, Pants has lost interest in both deals, and Ants has indicated to both Tall and Teek that he will not go through with either deal. But Tall and Teek, having learned that Ants was supposed to buy for Pants and that Pants would like to wriggle out, would now like to hold Pants liable. At a minimum they would like to sell for \$15,000 because the new building will make it hard to get that price from anyone else. Discuss the rights of both Tall and Teek against both Ants and Pants, assuming that neither Tall nor Teek has as yet commenced any judicial proceedings.

3. On the same general facts as those in Question No. 2, assume that Tall brought a damage action against Ants for breach of contract, and somewhat later Teek did the same, in both instances without either plaintiff's knowing of the relationships between Ants and Pants. Tall got a judgment against Ants, which has not been satisfied, and the Teek suit is still pending. Now for the first time Tall and Teek learn that Pants was involved in the deal. Discuss the rights of Tall and Teek against Pants.

4. Vic Putter worked as a machinist for Widgets, Inc., a conventional widget manufacturer. In the course of his work and largely by making good use of slack periods in the plant, he invented a revolutionary new widget that threatens to drive conventional widgets off the market. Putter has secured the patent although Widgets, Inc., has been manufacturing the new widget ever since it learned of Putter's invention. Putter's friend Vernon Ace offered to help him exploit the new invention. After much discussion they agreed that it would be desirable to sell the patent to a conventional widget manufacturer and that a fair price would be \$125,000, of which Putter said he would pay Ace twenty percent. Widgets, Inc., has steadily refused to buy the patent and has gone right on using it. However, Ace has finally made an oral agreement with Special Widgets, Ltd., who have agreed to buy the patent for \$125,000. Putter refuses to go through with the deal at this price, placing a higher value on the patent than that originally agreed to between him and Ace because of remarkable sales successes of Widgets, Inc. Discuss the rights and obligations between Widgets, Inc., and Putter; Special Widgets, Ltd., and Putter; and Putter and Ace.

5. Of two brothers, Really Able and Notso Able, Really was a financial success and Notso was always in financial difficulty. Notso Able and John Baker were partners in the firm of Baker and Sons, which operated a small grocery store, but Notso Able's connection with the business was generally unknown. Charles Charlie, a supplier of Baker and Sons, somewhat uneasy about the firm's account, approached Baker one day with a new gleam in his eye and said: "I've just heard that Really Able is your partner." "That's right, Able is my partner," was Baker's reply. In support of his reply Baker showed Charlie a bill for goods purchased, addressed to "Able and Baker," and a check made out to Baker by Really Able for \$200, which had been received in payment of goods but which Baker said was given him to discharge certain small debts of the firm. Just at that moment Really Able walked into the store to buy a package of cigarettes. "How's business?" he asked Baker. "We'll do a little better this month," was the reply. Charlie said to Really, "You're a foxy one, Really, as an accountant, to be interested in businesses in this town." Really Able made no reply and left. At about the same time Notso Able had taken the firm truck out of town to try to purchase vegetables for the store at nearby farms. Picking up a farmer's daughter en route, he let his mind wander and the truck wandered into the ditch, killing Notso and slightly injuring the passenger. Some time later, Really Able, as administrator of Notso's estate, consented to Baker's continuation of the business. Although Charlie has not been paid for past credit transactions, he has extended additional credit to Baker. Consider the relative rights and obligations of Really, Baker, Charlie, and the farmer's daughter.

FINAL EXAMINATION IN BUSINESS ASSOCIATIONS (Law 320)

Summer Session 1960

Professor Stephens

TIME LIMIT: 3 Hours

This examination consists of three questions, each of which has several parts. As to each question the relative point value for grading purposes is indicated. It will be necessary for you to make some assumptions beyond those stated in the questions; state clearly what you are assuming.

It should not be necessary to write long answers to these questions if you have given them sufficient thought before you begin to write. Therefore you are encouraged to be brief, but not at the expense of explaining fully your conclusions.

I. (40 points) P owned and operated all by himself a small automobile service station. A drove a gasoline truck, making deliveries for the D Company which supplied P with gasoline. On Friday, July 1, A was delivering gasoline to P, a job with which, according to their custom, P had nothing to do. Having started the flow of gasoline from truck to tank, A had gone into the service station office to smoke a cigarette; P was in the pit doing a grease job. As it later developed, A had carelessly attached the hose to the truck so that a trickle of gas was running down the hose and making a small pool near one of the gas pumps. About this time T drove in to buy some gas. P yelled from the grease pit: "Hey, A, how about putting some gas in that car for me?" Carefully extinguishing his cigarette, A went out to comply with P's request. As A walked up, T, who was smoking as he drove in, got out of his car and dropped his cigarette on the pavement with the intention of putting it out. However, it lit on the edge of the pool of gasoline and ignited it, seriously burning both T and A, as well as causing damage to T's car and P's gasoline pumps. Consider the agency aspects of the following controversies possibly arising out of these facts:

1. Assuming T's action in dropping his cigarette was not negligent:
 - (a) T sues P for personal injuries and damage to his car.
 - (b) T sues D Company for such injuries and damage.
2. Assuming T's action in dropping his cigarette was negligent:
 - (a) P sues T for damage to his service station.
 - (b) A files a workmen's compensation claim against D Company.

II. (30 points) X gave Y express authorization in writing to purchase for X scarce materials needed in X's business. The writing also indicated that Y was not to disclose his agency. In his own name and with no mention of X, Y entered into a written contract under seal for the purchase of a quantity of the needed materials from Z on credit for \$1,000. When the \$1,000 was not paid, Z brought suit against Y and secured a judgment. However, Y was judgment-proof and the judgment was not satisfied. But, as Z was seeking assets of Y against which to levy, Y's relationship with X came to light. Thereupon Z brought suit against X. Appraise, on doctrinal and policy grounds, the following matters that might be advanced as a defense by X in Z's suit against him:

1. The contract was between Y and Z, and X was not a party.
2. X had paid over to Y the \$1,000 for the materials.
3. The judgment that Z had obtained against Y.

III. (30 points) A and B formed a partnership for the purpose of operating a retail store, and each contributed his agreed share of the capital. Their relationship was not disclosed, however, and for several years A operated the store in his own name. In 1959,

- (1) The store delivery boy, negligently operating the delivery truck, ran into and injured X; and
- (2) In response to A's request, B borrowed \$2,000 from the Y Bank, advancing the same to A for use in the business and signing the note simply "B."

About a year later, B sued A for an accounting, in the course of which, of course, their partnership came to light. Consider the following problems:

1. X's negotiations with A having failed to produce a settlement, X now sues B for damages.
2. Y Bank having sold B's note to Z, Z now brings suit against the A and B Partnership and A and B personally on the note.
3. In B's suit against A for an accounting, B asserts a right to interest on the \$2,000 advanced to A, and A counters with a claim for compensation for his services in running the store.

FINAL EXAMINATION IN COMPARATIVE LAW (Law 382)

Second Semester 1958-1959

Professor Looper

TOTAL TIME: 4 HOURS

Write on any five (5) of the following seven questions.

1. Discuss the following aphorisms by Sir Henry Maine:
- (a) "Primitive law knows not so much a law of contract as a law of debt."
 - (b) "Criminal law is the mother of tort law."
 - (c) "The development of progressive societies has hitherto been a development from Status to Contract."

In a final paragraph, briefly assess Maine's contribution to the "science of comparative jurisprudence."

2. Discuss Holmes' views on:

- (a) the common law of agency,
- (b) the nature of contractual obligation,
- (c) the foundation of liability in tort.

In a final paragraph, briefly assess Holmes' contribution to the "science of comparative jurisprudence."

3. How do the civil law and common law systems differ in their approach to problems of procedure? (Admittedly there is a penumbra of ambiguity in the use of the word "procedure" here, and you may wish to clarify the "procedure-substance" dichotomy.) Evaluate these differences from the standpoint of procedural law reform in our own system.

4. In Commissioners of Homochitto River v. Withers, Mr. Justice Handy said:

"What must be understood by the term private property? It appears to us that it applies to such property as belongs absolutely to an individual, and of which he has the exclusive right of disposition; property of a specific, fixed, and tangible nature, capable of being had in possession and transmitted to another, as houses, lands, and chattels."

To what extent is this quotation applicable to the various legal systems you know anything about?

5. Under the French, German, and common law rules of contract, compare
- (a) the practical position of the offeree during the period in which he is considering whether to accept an offer,
 - (b) the distinction between unilateral and bilateral contracts.
6. To what extent do the different legal systems follow
- (a) the principle of "formlessness" of contractual obligation,
 - (b) the principle of the "abstract" contractual obligation?

What policy factors are involved in each case? Is there any relationship between (a) and (b)?

7. "The transition in every legal system is from Trespass to Negligence to Strict Liability -- i.e., from liability based on intentional aggression, to liability based on non-intentional fault, to liability based on non-culpable causation of harm." To what extent is this true? Desirable?

1. (45 minutes) Discuss the role of the jurist in the development of the law:

- (a) in the Roman legal system
- (b) in the modern civil law system
- (c) in the common law system.

(Some particularity of reference is desirable here: be allusive but not elusive.)

2. (15 minutes) Compare the attitudes of Blackstone and Bentham toward the common law in general and codification in particular.

MIDSEMESTER EXAMINATION IN COMPARATIVE LAW (Law 382)

December 16, 1959

Professor Looper

TOTAL TIME: 60 minutes

(The two questions count equally)

1. "It may be more or less true of all codes that they represent an end as much as they do a beginning." Discuss.
2. State concisely the significance in legal history of the following:
 - (a) William Blackstone
 - (b) Rudolf von Jhering

TOTAL TIME: 3 HOURS

Part I (2 1/2 Hours)

Write on any four (4) of the following five questions:

1. "There is more affinity between the Roman jurist and the common lawyer than there is between the Roman jurist and his modern civilian successor." Discuss this statement with reference to (a) methods and techniques of legal thought, and (b) substantive principles of law.
2. "The Anglo-American law of tort, no less than the law of contract, is ill equipped to meet the needs of an age of standardized mass consumption." Discuss.
3. Comment upon the following statement:

"The more satisfactory treatment accorded problems of formation and form in French and German contract law as compared with the common law seems due, in large measure, to the role which speculative and systematic thought played in the evolution and ultimate codification of these laws. At least until recent times, the common law has not benefited from any comparable efforts to think legal problems through systematically and to develop a rationalized body of legal solutions, rules, principles, and doctrines. Nor has the common law had the benefit of a thorough legislative reshaping in the course of which many inherited complexities and encumbrances could be discarded. In some areas of the law of contracts the common law may be better today just because this has not taken place; but it would seem that the common law pays a price in other areas -- areas which can benefit from rationalized, speculatively developed doctrines and in which the greater freedom of action at any given point in time ordinarily possessed by a legislature as compared with a court can be of considerable importance in determining the shape the law will take. At least these are the conclusions suggested by a comparative study of the evolution of contract in the civil and common laws."
4. Under the French, German, and common law rules of contract, compare
 - (a) the practical position of the offeree during the period in which he is considering whether to accept an offer,
 - (b) the distinction between unilateral and bilateral contracts.
5. "From one end of the bookshelf of the centuries to the other, in every mature legal system, there is only one rule of substantive law in torts -- he who injures another must make the injured party whole." (Cardozo) Discuss.

Part II (1/2 Hour)

Write short notes on any four (4) of the following:

- (a) Jand'heur v. Les Galeries Belfortaises
- (b) lesion
- (c) the position of the bailee in the common law and civil law systems
- (d) the principle of numerus clausus
- (e) the "extra-delictual law of damage distribution" in the German legal system

FINAL EXAMINATION IN CONFLICT OF LAWS (Law 339)

First Semester 1958-1959

Professor Holt

TIME: 3 Hours

Give reasons for your conclusions. Expect no credit for rambling and impertinent dissertations.

1. State X in its Domestic Relations Law has the following provision:

"A married woman has a right of action against her husband for his wrongful or tortious acts resulting to her in any personal injury..... as if they were unmarried, and she is liable to her husband for her wrongful or tortious acts resulting in any such personal injury to her husband.... as if they were unmarried."

In its Insurance Law State X has the following provision:

"No policy or contract shall be deemed to insure against any liability of an insured because of death of, or injuries to, his or her spouse or because of injury to, or destruction of, property of his or her spouse unless express provision relating specifically thereto is included in the policy."

In State X the S Company, an insurance corporation organized under the laws of that state and doing business therein, executed and delivered to W, the wife of H, an insurance policy binding the S Company "to pay on behalf of the Insured (W) all sums which the Insured shall become legally obligated to pay as damages because of bodily injury caused by accident and arising out of the ownership, maintenance or use of the automobile" if the accident occurs "within the United States of America, its territories or possessions, Canada or Newfoundland." The policy had no express provision concerning liability of S Company for injuries to the spouse of an insured.

H, W, and T were at all material times domiciled and resident in State X. In State Y, like State X one of the United States, W and H were riding in a car owned and driven by W when W collided with a car owned and driven by T. H was severely injured.

State Y has no statute like the quoted provision from the State X Insurance Law.

Rights of H in State X? In State Y?

2. H and W, domiciled in State X, were there divorced under a decree awarding W a certain monthly sum as alimony "so long as she shall remain unmarried." In State Y a divorce was procured by M from his wife, S, who was served only by publication in State Z, where she resided. S neither appeared nor pleaded in M's divorce suit. M, shortly after this State Y decree, married W in State Y. The two at once went to State Z to reside. S in State Z sued M for separate maintenance and obtained a decree in her favor. M appeared and contested the suit; the court found that M's divorce in State Y was "null and void." W then sued M for an annulment of their marriage. M defended, but the court found that their alleged marriage in State Y was "null and void" because M had another wife living at the time of the alleged marriage between M and W, and gave a decree for W. W now sues H in State X in a federal district court for alimony alleged to have accrued since the date of her "void" marriage to M. Discuss W's rights.

3. A statute of the United States provides that United States District Courts may entertain civil actions against the United States "for money damages. . .for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

P was employed by E to work primarily in State X, but while in State Y in the course of his employment, P was injured by the negligence of an employee of the United States who was acting within the scope of his employment. During the period of his disability P was paid his regular wages by E. Under the law of State X, there was no duty on P to reimburse E for such payment out of the proceeds of any recovery P might have against the United States. Accordingly, under such circumstances State X would have allowed recovery for loss of wages during the period of disability, but State Y would not. P sued the United States in a district court in State Y.

(a) How could a judgment allowing recovery for loss of wages be upheld?

(b) How could a judgment denying recovery for loss of wages be upheld?

4. The Workmen's Compensation Act of State X is applicable to injuries received inside or outside of the state when the employment contract is made in the state, and under the Act every employer and employee shall be "conclusively presumed to have elected to accept" the Act unless "prior to the accident" he shall have filed with the Compensation Commission a written notice that he "elects" to reject the Act. The Act further provides that the rights and remedies granted by it "shall exclude all other rights and remedies at common law or otherwise" on account of the injury or death.

The Workmen's Compensation Act of State Y provides an "exclusive" remedy for an employee against the employer, but not against a third party.

W was an employee of E (a painting contractor), both residents of State X, under a contract of employment made in State X. Neither W nor E ever filed a written notice of "election" to reject the State X Workmen's Compensation Act. E was insured against liability under the Workmen's Compensation Acts of X and Y. T was a general contractor for a construction job in State Y and as such made a contract with E as subcontractor for certain painting in connection with this construction job. While on the painting job in State Y, W was injured by the negligence of T.

Discuss rights and remedies of W.

5. In State X Saunders sold and delivered to Brooks a chattel under a contract of conditional sale. In State X Brooks defaulted on his payments, but sold the chattel outright to Peterson, a bona fide purchaser with notice. By the law of X Saunders' reservation of title was valid between the original parties to the contract of conditional sale and as against Peterson. In State Y Peterson sold and delivered the chattel to Davis, a bona fide purchaser without notice. By the

law of State Y conditional sales contracts are enforced as between the original parties and subsequent purchasers with notice, but are invalid as against bona fide purchasers without notice and creditors of a vendee in possession under a contract of conditional sale. Davis took the chattel to State Z, the law of which is similar to that of State X, and there Saunders sued Davis to get repossession of the chattel. Result?

6. A statute of State X provides that "every conveyance...affecting the estate... of any married woman in lands...must be executed by such married woman and her husband; and due proof or acknowledgment thereof must be made as to the husband and as to the wife; and the privy examination of the wife touching her voluntary assent to such conveyance shall be taken separate and apart from her husband... and such acknowledgment or proof and privy examination shall be certified...." H and W were man and wife domiciled in State Y, where there is no requirement for the separate examination of a married woman when conveying land. In State Y, H and W executed and delivered to B a deed to land which W owned in State X. The price paid W was \$200, admittedly a fair and equitable price. The deed was a warranty deed and on its face was executed with all necessary formalities, but W had not been examined separate from her husband, H, in accord with the statute of X. Twenty years later, when the land had been improved by successive grantees and was worth \$20,000, W sued in State X to recover the land and damages for its detention. The defendants claimed by mesne conveyances from the original grantee, B. Result? Is your conclusion in accord with that section of the Restatement that "capacity to make a valid conveyance of an interest in land is determined by the law of the state where the land is"?

7. Under the law of State T an action in tort does not survive the death of the tortfeasor; the law of State F is to the contrary. P, a domiciliary and resident of State T, was driving his car with due care in that state when D, a domiciliary and resident of State F, negligently drove his car into P's and injured P severely. D was also injured in the collision and died as a result of his injuries. D left estates in both States T and F, and administrators were appointed in each state.

Rights and remedies of P?

FINAL EXAMINATION IN CONFLICT OF LAWS (LAW 339)

First Semester 1959-1960

Professor Holt

Time: Three hours

USE CLEAR AND CONCISE ENGLISH. GIVE REASONS FOR YOUR CONCLUSIONS. YOU ARE FREE TO MAKE ASSUMPTIONS OF LAW OR FACT REASONABLY CALLED FOR BY THE QUESTIONS, BUT ALL SUCH ASSUMPTIONS MUST BE CLEARLY STATED.

1. In State X marriages between first cousins are not prohibited, but in States Q, Y and Z such marriages are by statute prohibited and declared void. H was domiciled in State Q when he received an advantageous offer to engage in business in State X. He accepted the offer, moved to State X, and six months after his removal married W, his first cousin, in State X by a ceremony that complied with the law governing celebration of marriage in State X. H and W lived together as man and wife in State X for five years and then moved to State Y, where they lived together as man and wife. Two years after such removal H died intestate, owning land in State Z. A week after the death of H, his only child, a son S, was born to W. The State Z Code provides that

"The status of legitimacy is determined by the law of the domicil of the parent whose relationship to the child is in question."

Is S entitled to inherit any interest in the Z land as legitimate son of H?

2. W sued H for divorce in State X. H entered a personal appearance and contested the suit on the merits, but the court, finding that W had a domicile in State X, granted W a divorce and \$200 a month alimony "until she should remarry." M and S were domiciled as man and wife in State Y. M left S in State Y, went to State Z, and two months later sued S for a divorce in State Z. S was served only by publication and made no appearance in M's divorce action. The Z court, finding that M was domiciled in Z, granted M a divorce. M married W in Z. H then ceased to pay alimony to W. Later W sued M in Y for an annulment of the marriage. M was personally served in this action, but defaulted, and the Y court, finding that at all material times M had been domiciled in Y, granted W an annulment on the ground that at the time of the marriage ceremony with W, M "had another wife living." W then sued H in an action at law in State Z for arrears of alimony from the time of the marriage ceremony with M in State Z. Personal service was had in State Z on H, who pleaded that the marriage in Z between M and W had terminated his duty to pay alimony under the State X decree. As counsel for W, how would you plead and argue?

3. To secure a loan made by C to him, M in State X executed and delivered to C a chattel mortgage of cattle then in State X and owned by M. The chattel mortgage was duly recorded in State X and was legally executed in accordance with the laws of State X. Later M delivered the cattle to D in State Y, a livestock commission merchant. D sold the cattle in the usual course of trade to bona fide purchasers without knowledge of the chattel mortgage. C consults you about a possible action against D for conversion. Discuss the possibilities of C's recovery of a judgment.

4. State X has a statute giving a right of action for wrongful death to "the personal representative" of the person wrongfully killed. It also has a statute that provides that

"The defense of contributory negligence shall, in all cases whatsoever, be a question of fact, and shall, at all times, be left to the jury."

In the only case involving the latter statute before the Supreme Court of State X, it was held that the statute could, consistently with due process, apply to the trial of an action based on an accident occurring in State X before the enactment of the statute, the statute being regarded as one regulating procedure.

In State F a trial court has power to direct a verdict on the issue of contributory negligence.

R was killed in a railway crossing collision in State X when the car he was driving collided with an engine operated by D Railroad. P, the duly qualified "personal representative" of R, sued D Railroad in State F. At the close of defendant's case, counsel for D Railroad moved for a directed verdict on the ground that all evidence introduced showed beyond reasonable doubt that R had been guilty of contributory negligence.

- (a) Indicate the reasoning that would lead the court to deny the motion.
- (b) Indicate the reasoning that would lead the court to grant the motion.
- (c) Which of the two decisions would be better and why?

5. (a) A statute of State X prohibits anyone from following the business, temporarily or otherwise, of a real estate broker in X without first procuring a license. The statute further provides that no person acting as a real estate broker within the State of X shall sue for a commission in the courts of X for the performance of any act as a real estate broker in State X without alleging and proving that he was a duly licensed real estate broker at the time the alleged cause of action arose.

D, the owner of land in State X, in State Y requested P, a resident of State Y and duly licensed as a real estate broker under the law of Y, to procure a purchaser for such land at a sales price of \$300,000, and agreed to pay P a commission of 5% for services in procuring such a purchaser. P fully performed, but D refused to pay the commission. P sued D in the proper court of State X. D moved for dismissal on the ground that the complaint did not state a claim upon which relief could be granted. The court dismissed the action.

(b) State A has a statute that provides that no person is to be charged on a promise to pay a real estate broker a fee for procuring a sale of land unless the promise is in writing and signed by the person to be charged. D, the owner of land in State B, there employed P, a broker resident and duly licensed in State B, to procure a purchaser for such land and promised to pay a commission of 5% of the sale price, but the promise was not in a writing signed by D. P procured in State A a purchaser of the land and in State A the deed of transfer to the purchaser was delivered. D refused to pay the agreed commission. P sued D in State B. The court refused to rule that the contract to pay a commission had to be in writing as required by the State A statute and gave judgment for P.

(c) State F has a statute that "no contract for the payment of any sum of money as a commission for the finding, by one person, of a purchaser for the real estate of another shall be valid, unless the same shall be in writing, signed by the owner of such real estate or his duly qualified representative." In State S a parol contract for the payment of a commission for the sale of real estate is valid. In State S David made a parol agreement with Peter for the payment of a commission to Peter for effecting a sale of land in State S owned by David. David refused to pay. Peter and David had been residents of S, but David became a resident of F and in that state Peter brought an action for the recovery of his commission. He recovered judgment.

In each of the three cases just stated write an opinion in support of the decision. Indicate briefly how the three decisions can be reconciled.

6. State X has a statute that removes all contractual incapacities from married women. State F has a statute that removes contractual incapacities from married women with one exception: It expressly states that married women shall be incapable of contracting as sureties or guarantors for their husbands. D, a married woman domiciled with her husband, H, in State X, promised in State F by writing there delivered to C, a domiciliary of State F and engaged in a wholesale business there, to guaranty payment of goods that might be sold on credit to H by C during the following thirty days. In reliance on D's promise, C on H's order shipped goods from F within the thirty-day period to H, who accepted the goods at his place of business in State X, but who unjustifiably refused to pay therefor. Discuss C's rights against D.

7. C, a domiciliary and resident of State X, was driving his car with due care in that state when D, a domiciliary and resident of State F, negligently drove his car into C's and injured C severely. D also received injuries from the collision and died as a result thereof. He left estates in both States F and X; and administrators were appointed in each state. Discuss the rights and remedies of C.

FINAL EXAMINATION IN CONSTITUTIONAL LAW (Law 310)

Second Semester 1958-1959

Dean Sullivan

TIME: 4 HOURS

1. The State of X levied a tax on the gross income of all individuals and corporations domiciled in the state and a tax on the gross income of foreign corporations, based on the income derived from business activities in the state. The ABC Corporation was chartered in X and therefore was a domestic corporation with its principal place of business in X. It engaged in the manufacture of machinery. ABC had income from the sale of manufactured articles which were sold F.O.B. the factory in X. Some machinery was sold F.O.B. the place of business of the buyer in other states so that the price included the cost of transportation in ABC's own trucks. One part of the principal product required some special processing which was done in State Y. The parts were trucked to State Y in the vehicles owned and operated by ABC and were returned in the same trucks. The price paid for the processing was included in the sale price of the finished machinery. ABC also had income from some state bonds of State Y and from some United States Government bonds. ABC refused to pay the taxes and, when sued by State X, defended on federal constitutional grounds. Which parts, if any, of the gross income are taxable? Why?

Would it make any difference if this had been a foreign corporation? Why?

What effect would it have on the outcome of the case, if any, if the tax had been called a privilege tax? Give reasons.

2. Johnny Senno, a notorious gangster, was picked up in a police dragnet after the shotgun murder of one of Senno's competitors in the gang world. He was taken by the sheriff of the county in which he was arrested to the jail of an adjoining county where he was questioned at length about his whereabouts at the time the crime was committed. No force was used and he was permitted the usual amount of time for sleeping and eating, but the police questioned him continuously during his waking hours for four days; for all of this period he was denied the right to call an attorney or his friends. While he was under arrest, the police went to his apartment and conducted a careful search to discover anything that would connect him with the crime. They seized a gun which was proved to be the murder weapon and some letters indicating that there had been a disagreement between Senno and the murdered man.

Senno at first demanded a lie detector test, which the police refused to administer. At the end of the fourth day of questioning, he confessed. He then was permitted to call an attorney, but he became dissatisfied with his lawyer and subsequently dismissed him. At the trial, he appeared without an attorney and, although the court offered to appoint one for him, Senno refused to accept the attorney named by the judge. He went to trial without assistance of counsel.

At the trial the confession and the gun and letters secured by the search of his apartment were admitted in evidence. The jury convicted him of murder, and, under the state law, made no recommendation for the sentence. In a subsequent proceeding, the court heard evidence of prior convictions for crimes and the general unsavory character of Senno. Acting on this information, which was not subjected to cross-examination, the judge sentenced Senno to be executed.

Assume that no state constitutional provision had been violated and that the defendant raised the federal constitutional questions at the appropriate time. Should the conviction be affirmed or reversed? Discuss fully.

3. The legislature of State A passed a statute providing for a grant of scholarships of \$500 each to graduating seniors of the state's high schools who scored the highest on a state examination. The scholarship would be available to the student only if he could show "need" for public support for his education. He could use the scholarship at any school within the state, and the tuition would be paid by the state to the college for any academic program he chose, including the study for the ministry in a sectarian seminary.

(a) Is this statute valid under the United States Constitution?

Suppose State B, below the Mason-Dixon Line, had a similar statute and the scholarship was used at a private school which was operated as a segregated college.

(b) Is this statute constitutional?

(c) Would it make any difference in (a) and (b) if the tuition were paid for a secondary school? A primary school?

State X has a similar statute which provides a scholarship of \$1,000 per student for all in the upper 2% of the high school graduating class with a minimum of one scholarship to each school, regardless of size.

(d) Is this program valid?

4. In 1955, the legislature of State X passed a statute requiring every truck using the roads in the state to have lights which completely outlined the vehicle, so as to give other drivers notice of the size of the truck. This statute also imposed certain requirements on the size of tires of the trucks, the weight and load limitations, and the brakes which had to be installed. State Y, which bordered State X, had regulations which differed materially from those of X.

(a) Are these regulations valid? Why?

In 1959, the Congress passed an act as follows:

"1. The business of trucking on the highways shall be subject to the laws of the several states which relate to the regulation of safety on the highway.

"2. No Act of Congress shall be construed to supersede any law enacted by a state to regulate safety on the highway, unless the Act of Congress expressly provides that it shall supersede the state enactment."

(b) Discuss the validity and effect of this act of the Congress.

5. The legislature of State X passed the following statute:

"It shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of

any race, color, creed or religion, which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. Any person, firm or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200)."

A was charged with publishing and distributing the following statement:

"Protect our country from the EPISCOPALIAN MENACE.

"The Episcopal Church in the United States is the agency of Great Britain in our country. It works to undermine democracy and to turn us over to Socialist Great Britain. It is corrupting our people and undermining our power to resist British propaganda. Shun all Episcopalians and use your influence to prevent the growth of the Church in the United States."

(a) A was prosecuted under the statute and he defends on the ground that the statute is unconstitutional. What result? Why?

B, a motion picture theater owner, showed a war film which depicted Japanese in a very unfavorable light. It showed them as killers of defenseless prisoners and as arrogant conquerors in areas in which they had been successful.

(b) B was prosecuted under the same statute. What result? Why?

FINAL EXAMINATION IN CONSTITUTIONAL LAW (Law 310)

Second Semester 1959-1960

Dean Sullivan

Total Time: 3 1/2 Hours

You are urged to read the questions carefully and to prepare your analysis before you begin to write. Maximum credit will be given for concise and accurate analysis and for application to that analysis of your knowledge in this field. No credit will be given for excessive length of answers.

1. The School and University Employees Union is a national labor organization which is composed of local unions in many states. The Union's by-laws provide that membership shall be restricted to white persons. The Union represents the employees in certain classes of employment in collective bargaining with the University of Illinois, a state supported institution. Though not required to do so by law, the University recognizes the Union, and wages and other terms and conditions of employment in the classes represented are negotiated between the parties and are applicable to all in these positions. Because of the civil service laws of the State, the Union does not have either a closed or union shop contract with the University, but the Union does urge its members to apply for positions and to take the civil service examinations, and urges the employing agencies to select from the applicants the individuals who are members of the Union.

Two non-white applicants were denied membership in the Union. They seek to enjoin the Union from enforcing its by-law in a way which prevents their membership, and they also seek to enjoin the University of Illinois from continuing to recognize the Union. The Illiana Local of the Union is willing to accept the applicants but is unwilling to risk expulsion from the national if it does so. Assume that the National Labor Relations Act does not apply.

Decide all of the issues presented by the petition for an injunction. Discuss fully.

2. The Red Ball Trucking Company operates common carrier motor trucks exclusively in interstate commerce under a certificate of convenience and necessity issued by the Interstate Commerce Commission. Trucks operate between Louisville, Kentucky, and Chicago, Illinois. There are three kinds of vehicles: twenty-ton semi-trailers which are operated over the road; twenty-ton semi-trailers of special construction which are operated piggy-back on special cars of the Pennsylvania Railroad between the same points when the shipment consists of a full truckload, delivery then being made in the large truck directly to the consignee; and five-ton trucks. For less than truckload lots, the load is assembled at terminal warehouses and docks at the two terminal cities. A truck is unloaded, breaking the bulk at the warehouse, and individual deliveries are then made in the five-ton trucks located at the two terminal cities. Similarly pickups are made and brought to the warehouses for loading into the through vehicles. Occasionally goods may be stored temporarily in the warehouses. It should be clear that all shipments are received from or destined for transportation outside the state.

The State of Kentucky sought to impose the following taxes:

1. A warehouse tax of five cents per square foot on all warehouse space.

2. A personal property tax on all of the five-ton trucks in Kentucky, and one-half of the value of all of the through trucks.

3. A personal property tax on the value of all of the property which is stored in the warehouse on tax day.

4. A franchise tax measured by the gross income from shipments which originate in the State.

Determine the validity of these taxes. Explain.

3. The State of Missokan becomes concerned over juvenile delinquency and especially about the increasing crimes of violence being committed by persons of tender years. The Legislature creates the Missokan Youth Commission. The statute provides that no action of the Commission shall ever be considered to be an adjudication of criminality on the part of any minor under its jurisdiction. The Commission is given exclusive jurisdiction of proceedings concerning any minor under the age of 18 living or found in Missokan:

"(a) who has committed what would otherwise be a crime, whether state or local, or (b) whose environment is injurious to his own or another's welfare, or (c) who, upon the testimony of at least two psychiatrists licensed by the Department of Health of the State of Missokan, is found to be a probable future incorrigible, whose presence at large within this state presents a clear and present danger of public offense or disorder."

For any minor found by the Commission to come within the terms of the statute, the Commission may prescribe curative custody in an appropriate state institution until such time as the Commission shall find that the interests of the minor shall permit his release. A separate section of the statute provides for "Procedures in Minors' Cases," which shall be "conducted in an informal manner" from which the general public shall be excluded and to which:

"only persons shall be admitted whom the presiding Commissioner finds to have a direct interest in the case or in the work of the Commission. The minor shall be excluded from the hearing at any time at the discretion of the presiding Commissioner."

The statute further recites that

"in the interest of the minor and for facilitating speedy and accurate decisions as to his physical, mental, and social well-being, technical rules of evidence shall not be utilized. Whatever evidence the Commission deems reasonably probative shall be admitted, including reports of social and psychiatric workers who may have made investigations of the minor's environment, experiences, character, or aptitudes.

"The record in any case before the Commission shall be sealed at the close of the hearing and shall not be available to the press."

Terrible Terry was placed in a security institution for minors after a proceeding conducted under the above statute. His father, Thomas Terry, files a petition for the release of his son on the ground that the statute is unconstitutional. What result? Discuss fully.

4. The governments of Great Britain, United States, and Mexico have become concerned over the deterioration of good relations between Cuba and the other states in the Organization of American States. They fear that the anti-Yankee campaign carried on by Castro and his followers will evoke anti-Cuban activities in the United States, Mexico, and the West Indies Federation. Britain, Mexico, and the United States negotiate a treaty in which each agrees "to restrict expressions of press, radio, or television, circulated or broadcast across international boundaries, directed against governmental institutions, which expressions have as their purpose the undermining of an existing government or giving aid or assistance to a revolutionary movement in any country in this hemisphere." A Florida radio station, WTNO, broadcast anti-Castro propaganda. The Federal Communications Commission revoked the license of the station. WTNO files a petition in the Court of Appeals to rescind the order of the Commission. (Assume that this is the correct procedure.) What result? Why?

5. The state of Calvada is the owner of a local railroad which serves as a bridge for transfer of freight between railroads engaged in interstate commerce, and which also furnishes service to the wholly owned docks at which ships in foreign commerce load and unload.

The Railway Labor Act (United States) requires every railroad to bargain collectively with representatives of its employees. The state of Calvada requires all of its employees to be selected through merit system procedures. All persons so selected are civil service employees of the state, and their compensation and terms of employment are fixed by the Legislature. The civil service act prohibits collective bargaining by civil service groups and makes illegal and unenforceable any collective bargaining contract which might result from this prohibited bargaining process.

A group of employees of the state who work on the state-owned railroad file a petition with the Railway Labor Board, asking that the managers of the state railway be directed to bargain with their representatives. Assume that the state railroad comes within the definition of that term in the federal act. What result? Why?

MIDSEMESTER EXAMINATION IN CONTRACTS A (Law 301)

November 24, 1958

Professor Davis

TIME ALLOWED: Fifty-eight Minutes

1. During World War II some thirty ships were wrecked or grounded in shallow waters adjacent to New Guinea. After the War the Australian government commissioned a private corporation to dispose of the vessels within a specified time. Some of the ships were salvaged by the corporation, some were towed to deep water and sunk, and others were sold for salvage. The corporation advertised for bids for "an oil tanker, approximately 6,000 tons, on Jourmaund Reef about 100 miles north of Samurai." Actually there was no such tanker in existence, although an agent of the corporation had heard unverified rumors from shipping interests that there was a stranded tanker in the designated place. In fact the only vessel stranded on Jourmaund Reef was a 12,000-ton Japanese submarine tender.

Captain Strong made the highest bid for the tanker, and it was accepted by the corporation. After an unsuccessful search for the nonexistent ship, during which the submarine tender was located, Captain Strong brought suit in a common-law court for damages for breach of contract. He then brought a second action to recover expenses incurred prior to discovery of the submarine tender and for expenses of his return voyage from the point of such discovery. What decision in each case, and why?

2. D's salesman called on M and demonstrated a new type of industrial vacuum cleaner manufactured by D. M was favorably impressed, and after some discussion of price, terms, and delivery dates, the salesman filled out a printed form which read: "NONCANCELLABLE ORDER. Not binding on D until accepted by D in writing. To D -- Customer hereby orders ten Model Z cleaners for delivery in 28 to 30 days. Price \$200.00 each, delivered to Customer's place of business. Terms cash in 60 days. Signed _____, Customer. Above order accepted _____." This document was signed by M in the space preceding the word "Customer," and was then promptly transmitted to D by the salesman. Upon receiving it, D at once shipped the ordered cleaners to M, shipping charges prepaid. While the goods were in transit, M wired D: "Cancel my order." On arrival of the cleaners, which was prior to the delivery of M's telegram to D, the carrier attempted to deliver the cleaners to M at M's place of business, but M refused to receive them. Does D have an action for breach of contract? Give reasons.

End of Examination

FINAL EXAMINATION IN CONTRACTS A (Law 301)

First Semester 1958-59

Professor Davis

TIME ALLOWED: THREE HOURS

Instructions: The examination consists of three questions, which will be weighted as follows for grading purposes: Question 1 -- 3/13

Question 2 -- 5/13

Question 3 -- 5/13

At least 75 minutes should be reserved for Question 3, which will require a close reading and careful analysis of the agreement set out in the Appendix.

1. During 1958 T bought from R, at 25¢ per pound, a considerable quantity of industrial grease known as "R-Lube." Meantime, during 1958 R developed a new, lighter weight grease suitable for some but not all of the purposes for which "R-Lube" is suitable, taking great pains to keep the development work secret. By the end of the year the new product was ready to market and was designated on R's records as "R-Lube Special." On January 2, 1959, R mailed to about 1000 of his customers a card reading:

R is now offering for immediate order in any quantity not exceeding 2000 lb. R-Lube Special at 20¢ per pound. This is an economy product of good quality. Detailed technical specifications will be provided on request.

R knew the new product was not heavy enough for T's operations and did not intend that a card go to T. One of the cards, however, was sent to T by reason of a clerical error in R's office. T at once wrote R: "Am pleased to note the special price on R-Lube. Send me 2000 pounds." Upon receipt of this letter R telephoned T, learned that a card had reached T, explained that the card had been sent to him by mistake, and informed T that a new product was intended by the phrase "R-Lube Special." T nevertheless insisted that he had a contract for 2000 pounds of R-Lube at 20¢ a pound. The prevailing price on R-Lube was then and has remained at 25¢ per pound.

Assume that R consulted you at once. Indicate your advice to R concerning his legal relations with T.

2. Bullionhead, a wealthy farmer and philanthropist, wanted to help his nephew Morpheus, a down-and-out narcotics peddler who was too proud to accept charity. Accordingly he wrote Morpheus as follows: "If you will come down and take care of my little flock of Buff Orpingtons /a good all-purpose breed/ until I die, you can have room and board for the rest of my life and my private swamp in Florida when I go. The Buffs are just too vicious for me to handle." Morpheus left the skid row where he had been working and went to Bullionhead's farm, where he cared for the chickens (there were about six in the flock) without incident for three months. At this point Bullionhead became disturbed by Morpheus' apparent interest in Bullionhead's teen-age daughter. Bullionhead privately informed his wife one evening: "I'm going to kick that Philadelphia mainliner off the farm tomorrow." Bullionhead's wife, who was secretly enamored of Morpheus, replied: "If you will let Morpheus stay for another two years, I promise that at the end of that time I shall contribute from my separate funds at least \$5000 a year to your favorite charity as long as I live." Bullionhead agreed. About a year later, however, he

evicted Morpheus from the farm. Several months thereafter, Bullionhead died of a heart attack while chasing an escaped Buff Orpington. By his will Bullionhead devised the Florida swamp to his daughter. What decision in the following lawsuits, and why?

(a) Morpheus v. Bullionhead's executor for breach of an alleged contract by Bullionhead to furnish Morpheus with room and board for the rest of Bullionhead's life and to leave the swamp to Morpheus.

(b) Bullionhead's widow v. Bullionhead's executor for breach of an alleged contract with the widow, the breach consisting of evicting Morpheus as stated above.

3. Construction Company (plaintiff) entered into the agreement with Donald Digger (defendant) which is attached hereto as an appendix. The highway improvement referred to in the agreement was to consist of a new stretch of highway for about five miles through a low and usually wet area. Before work began, the area was filled partly with about 50,000 cubic yards of refuse from an old city dump (described in the agreement as "dump removal") and partly with about 100,000 yards of sandy earth (described in the agreement as "unsuitable earth removal"). It was clear that neither type of stuff was usable in the new roadbed, and that most of it could be removed by filling with water and dredging. Defendant moved his equipment onto the site on October 28, 1958, but never removed any "dump" or "unsuitable earth." He stalled for about a month, saying his dredge would not work, and then abandoned the job. Plaintiff had the dredging done by another subcontractor at a cost considerably in excess of the estimated cost under its agreement with defendant.

Plaintiff now sues defendant for breach of contract. What decision?

End of Examination

FINAL EXAMINATION IN CONTRACTS A (LAW 301)

Second Semester 1958-1959

Professor Davis

TIME ALLOWED: THREE HOURS

1. Your client is a wealthy sportsman, Sam Schooner, who owns a yacht which he keeps in a yacht basin at the port of Fantail. For some years he has been eager to employ Spelvin Spar, a native of Fantail, as the captain of his yacht. On May 20 he heard that Spar was free for the summer season this year. He immediately sent a telegram to Spar reading: "ONCE AGAIN OFFER YOU POSITION AS CAPTAIN OF MY YACHT, JUNE THROUGH AUGUST, SIX HUNDRED PER MONTH, CREW OF TWO OTHERS PAID BY ME. LET ME HEAR BY NOON WEDNESDAY TWENTY SEVENTH. SAM SCHOONER." Late on the evening of May 21 Schooner received a telegram reading: "WOULDN'T SAIL YOUR BUCKET FOR TWICE THE PAY. SPELVIN SPAR." Schooner began looking around for another captain. He met with Paul Poopdeck on Saturday, May 23. Because he knew that Schooner preferred Spar as his captain, Poopdeck was at first reluctant to take the job, but finally signed a contract as captain for the season. On Wednesday morning, May 27, Schooner received a letter from Spar reading: "Have not heard from you since my letter was mailed last Thursday. Do you still want me to report? Sincerely yours, Spelvin Spar." As soon as he could, last Sunday, May 31, Schooner made a trip to Fantail to find out what had happened. He learned that the day after receiving his telegram, Spar had had dinner at the Mal de Mer Inn with some fellow seafarers. Spar had shown them his offer from Schooner, and in their presence had written out an acceptance which he had posted at once in the lobby of the Inn. For some unknown reason this letter never reached Schooner. After Spar had gone home early, his companions stayed on at the Inn and had a good many drinks. Someone conceived of a practical joke on Spar, and the result was the telegram previously set forth. After posting his acceptance, Spar declined two other offers of summer employment, and still desires to serve as captain for Schooner.

Schooner wants to know whether he is legally bound to Spar, and whether there is any way he can get out of his deal with Poopdeck.

2. Fifteen years ago two friends, Herm and Sherm, were picnicking on a riverbank with their fiancées. Herm's girl, Torchy, who could not swim, accidentally fell into the river and was in obvious danger of drowning. Herm yelled, "I can't swim either," whereupon Sherm dived in and expertly rescued Torchy. Some days later Herm wrote Sherm: "You have saved my future wife, and I am going to pay you \$1000 to show my gratitude." Sherm, although preserving the letter, did not answer it or ever mention it to Herm until a few weeks ago. Meanwhile over the years Herm has prospered in business, whereas Sherm has always been a pauper. He and his apparent wife Sheila have frequently stayed for long periods as guests in the mansion owned by Herm and Torchy. The last such visit terminated in an acrimonious exchange between Herm and Sherm, in which the former described the latter as a "meathead," "bum," "freeloader," and "deadbeat." Sherm then reminded Herm of his letter as previously set forth. Herm vigorously protested that he had merely forgotten the letter and would "pay the lousy thousand next Monday." As Sherm and Sheila departed, bag and baggage, Herm handed Sherm a signed "IOU" for \$1000. A week later, Sherm received the following letter:

Dear Sherm,

Much to my astonishment, I have just learned that you and Sheila never went through a marriage ceremony. To the shame of ourselves and our friends, it now appears that for years we have been fraternizing with mortal sinners. For this reason, it will be impossible for me to pay you \$1000 or any other amount.

Regretfully,
Herm

Sherm now seeks your advice concerning his chances to recover \$1000 in a legal action against Herm.

3. On April 1, X Hotel Company announced that it planned to build a new hotel. Anticipating that the Company would soon invite bids for construction, P, a bathtub dealer, obtained the plans and submitted a bid on bathtubs to a number of general contractors considered likely to bid on the construction job. P's bid contained the following statement: "This bid is an offer to supply bathtubs at the above rates and in accordance with the terms herein recited. This offer is firm and will not be revoked prior to May 20. However, if our bid is used by you in submitting your bid for construction of the hotel, this offer will be revoked on May 7 unless you notify us by then that you have used our bid." One of P's bids was sent to D. On May 1, the X Hotel Company invited bids from general contractors, and D submitted a bid. On May 6, D wired P: "We used your bid on bathtubs on the X Hotel project." P received the wire on the same day. On May 8, P wrote D: "We regret that we must revoke our offer to supply bathtubs." D immediately replied: "We reject your attempted revocation." On May 11, D was awarded the contract to build the hotel. That day D wired P: "You will be glad to hear that we got the X Hotel job. We will contact you about it soon." Upon receiving this wire, P set about acquiring enough bathtubs to carry out his offer to D. On May 16, after P had acquired the bathtubs, D notified P: "We will buy our bathtubs from Y. Thank you for dealing with us." P has been unable to dispose of the bathtubs, and now sues D for breach of contract. Decide the case.

4. The Whole Hole Company, excavators, contracted with X to do specified excavation work for \$5000 on a lot owned by X, preliminary to construction of a nuclear explosion shelter planned by X. When the work was about half finished, Whole Hole found that it would lose from \$500 to \$1000 on the contract because of an unexpected rise in the cost of labor since the contract was made. Whole Hole notified X that it would not complete the job unless X would agree to pay \$500 more, and X agreed to do so. Dr. Headshrinker owned and operated a psychiatric clinic on an adjoining lot. Thinking that the explosion shelter would enhance the value of his practice, he also promised to pay Whole Hole \$500 if it would go ahead and finish digging. Whole Hole then completed its work. The explosion shelter was finished shortly thereafter. X built a steel fence around it and posted several large signs reading: "PRIVATE. KEEP OUT AT ALL TIMES! TRESPASSERS

WILL BE PROSECUTED." Subsequently Dr. Headshrinker climbed the fence out of curiosity and was snooping around inside the shelter when an abandoned USAF aircraft crashed squarely on top of it. Headshrinker was uninjured.

(a) Whole Hole now sues X and Headshrinker to recover the additional amounts promised by them respectively. What decision in each case?

(b) X sues Headshrinker to recover the value of Headshrinker's life. What decision?

End of Examination

MIDSEMESTER QUIZ IN CONTRACTS A (Law 301)

April 21, 1959

Professor Davis

1. A wrote B on April 1: "I will give you \$600 for your Ford car, provided you deliver it to the above address stated in the letterhead on or before noon, April 10. My offer is not subject to countermand." B replied by mail the following day: "I accept your offer with regard to the Ford, and I promise to deliver it to the address you specified on or before noon, April 10." This letter was not received by A until April 8. A had bought another Ford from C for \$500 a few hours before. C on the same day encountered B on the street and happened to mention to B that he, C, had just sold a Ford to A for \$500. B nevertheless drove his Ford to the address A had specified and parked in the driveway at 11:55 a.m. on April 10. A was taking a shower and did not answer B's ring on the doorbell until 12:05 p.m. A then rejected B's car on the ground that he had already bought the car he wanted from C. B now sues A for breach of contract. What decision?

2. After the murder of his brother, Buster Bullionhead published in the newspapers an offer to pay \$100 "for the arrest and conviction of the person or persons who murdered my brother." Sherlock Hammer, an amateur detective, read the ad and then wrote a letter to Bullionhead stating that he considered an offer of such an amount an insult to the profession of criminology. He concluded by saying, "No self-respecting citizen would work for or claim any such trifling amount." Hammer subsequently obtained information which incriminated the killer of Bullionhead's brother. During the killer's trial Bullionhead published a withdrawal of his offer in the same newspapers and for the same length of time as had been utilized in making the offer. The killer was thereafter convicted of the crime, and the conviction has become final. Hammer now sues Bullionhead for the reward. What decision?

End of Quiz

MIDSEMESTER QUIZ IN CONTRACTS A (Law 301)

December 11, 1959

Professor Davis

TIME ALLOWED: Sixty Minutes

1. X orally offered to lease his farm to Y for two years at an annual rental of \$1200. Y replied, "It's a deal, but I hope you'll let me have the place for \$1100 a year." X answered: "I may do that. I'll think it over and in the meantime I'll have my lawyer draw up the lease and he'll phone you when to come by his office and sign it." X subsequently instructed his attorney to draft the lease at a rental of \$1200 a year. The lawyer, however, inadvertently typed in the rent as \$1100 a year. X then called at the lawyer's office and signed the lease so drafted without reading it. Later the same day Y went to the lawyer's office, read the lease carefully, and signed it. Several weeks later X discovered that the lease called for an annual rental of \$1100, and thereupon brought suit for rescission and reformation of the lease so as to substitute \$1200 for \$1100. What decision?

2. Oliver Owner and Bertram Broker signed a document which read as follows:

Agreement. I, Oliver Owner, hereby give Bertram Broker the exclusive sale of my house and lot on Green Street for one month from date; commission 5 per cent when and if a sale is consummated, price subject to my approval. In consideration of the above, I, Bertram Broker, hereby accept the said agency and agree to carry it out. Signed this first day of November, 1959. Oliver Owner. Bertram Broker.

One-half hour after the agreement had been signed, Hobart Homeless appeared at Broker's office, told his wants, and, on being informed by Broker of the availability of Owner's house, took Broker in his (Homeless') car to see the property, which was in the possession of a tenant. Homeless then made an offer of \$20,000 for the property, which Broker communicated to Owner about one hour after the above agreement had been signed. Owner stated that he had himself meanwhile sold the house to another purchaser for \$25,000, and that the agency was terminated. Broker now consults you for advice concerning his legal rights against Owner.

End of Quiz

FINAL EXAMINATION IN CONTRACTS A (Law 301)

First Semester 1959-1960

Professor Davis

TIME ALLOWED: THREE HOURS

1. Botwell operates a large retail grocery store. U-Eata is a corporation selling various brands of crackers and cookies at wholesale. Pressure is a traveling salesman working for U-Eata. Pressure called on Botwell and showed him the cookies and crackers carried by U-Eata. A written agreement followed:

Botwell agrees to buy all of the graham crackers needed in his business for the next six months from U-Eata at \$6.00 per crate. Requirements not to exceed 1000 crates during the six months. U-Eata hereby agrees to sell all chocolate cookies which Botwell thinks necessary for his trade; price 5 cents per pound, orders not to exceed 1000 pounds per month -- contract to run for six months. No agent or representative of the company, except agents at the home office in Chicago, has any power to bind the U-Eata Corporation to any agreement. All contracts subject to approval of the home office.

/s/ Botwell Grocery
/s/ U-Eata Corporation
by I. Pressure

December 1, 1959

On December 15 Botwell received the following letter from Kookoo Kookies Korporation, a manufacturer of chocolate cookies: "We have just today heard about your deal with U-Eata, which is one of our outlets. If you will agree to buy all your requirements of chocolate cookies from them for the next six months, we will pay you a bonus of four cents for each pound of cookies you order." Botwell immediately wired Kookoo Kookies: "Delighted to accept your offer." This wire was delivered in normal course. Botwell heard nothing from U-Eata's Chicago office for a month. On January 2, 1960, he ordered 1000 pounds of Nabisco chocolate cookies. U-Eata wrote back saying that they had no contract with Botwell because the agreement above had never been accepted by the home office. Botwell purchased the cookies elsewhere at a higher price.

What are Botwell's rights against U-Eata if he proves that for five years he had signed similar agreements with U-Eata and that at no time had U-Eata's home office notified him of approval of the agreements? What are Botwell's rights against Kookoo Kookies?

2. Nick Stone, apparently drowned, was pulled out of a lake by a professional lifeguard. The latter fainted from exhaustion. Miss Creole Cribbet, a Girl Scout-mistress, happened to be present and promptly applied artificial respiration to Stone. After three hours of this, he regained consciousness. Several days later, Stone gave Miss Cribbet a promissory note in the amount of \$2000 in return for her agreement to bring her Girl Scout troop out to Stone's small backyard and to clear it of grass snakes, weeds, and insects. In the course of this project, Miss Cribbet was bitten by a scorpion and almost died because of extreme allergy to insect venom. Stone thereafter defaulted on the note. Does Miss Cribbet have an enforceable claim against him? Explain.

3. In January 1959, the Justinian Law School, an incorporated private (profit-making) institution in southern Illinois, mailed two hundred pamphlets to undergraduate college deans and department heads all over the country. The pamphlets contained this announcement:

A. For the first year's work in this Law School, we are now granting an unlimited number of scholarships consisting of full tuition plus a cash stipend of \$2000. The applicant must qualify as follows:

(1) Prior to registration at this Law School he must have completed

three years of undergraduate work in the liberal arts and sciences at any accredited college or university in the United States and must have achieved a cumulative grade average of A-minus for all such work. (2) He must present an executed loyalty oath or affidavit in the form now prescribed by the National Education Act.

(3) He must appear at the Dean's Office for a personal interview.

B. Application forms are available upon request to the Dean's Office.

In March 1959, Bertha Boondoggle, a senior in the College of Liberal Arts and Sciences at the University of Illinois, wrote the Dean of Justinian Law School as follows: "I have read your brochure, which is posted on our bulletin board. This is a splendid offer, and I accept it -- on condition, of course, that my qualifications meet your requirements. Please send me an application form." In May 1959, Bertha persuaded her uncle, Briskethead Boondoggle, to rewrite the latter's will so as to substitute a bequest of \$10,000 to Justinian Law School for a prior bequest of \$10,000 to the University of Illinois. Uncle Briskethead died in July. In September 1959, Bertha Boondoggle in person presented her scholarship application, with transcript of undergraduate work and executed loyalty oath, to the Dean at Justinian. The transcript showed a cumulative A-minus average for her first three years of college, but only a B-plus average for all four years. The Dean rejected her application, Bertha learning for the first time that late in May the Dean had mailed to all the original addressees notices "cancelling and voiding" the January pamphlet. Bertha now consults you on the question whether she has any enforceable rights against Justinian Law School.

4. X desired to install for his farm dwelling lawn a sprinkler system using water pumped from a nearby stream. Y recommended to X a system of small ground-level sprinkler heads, estimated the cost at \$3000, and declined to make a firm bid for the job because of special problems posed by sediment in the stream. On January 3 X wrote Y: "If you can get started expeditiously, go ahead and install the sprinkler system we discussed. I can pay you cost plus 10%." Y received the letter on January 4 at 10:00 a.m. On January 4 W came to X, said he had installed several sprinkler systems using large above-ground revolving sprinklers unaffected by sediment, and offered to install such a system on X's property for \$1700. X replied: "I have already asked Y to put in my system. However, the job is yours if I succeed in withdrawing from my deal with Y. I will write him now." W then said: "I will go by Y's place on the way to town and will deliver your letter to him." An itinerant seed salesman witnessed this conversation. X wrote Y: "I have changed my mind. Please ignore my January 3 letter." W was handed this letter at 2:00 p.m., tried without success to find Y, and then deposited the letter in a post-office mail slot at 6:00 p.m. on January 4. Y did not receive it until 3:00 p.m. on January 5. However, Y met the itinerant salesman at a social gathering the evening of January 4, and the salesman repeated to him the substance of that afternoon's conversation between X and W. At 8:00 a.m. on January 5, Y came to X's farm with a crew of workmen, equipped to and intending to install X's sprinkler system. When half the pipe and other materials had been unloaded, X observed Y and said to him: "Didn't you get my second letter? I don't want you to do this work." Despite Y's insistence that he had received no letter cancelling X's request, X refused to let Y go ahead with the work. As a result of the ensuing controversy, X sought legal advice. Indicate, with your reasons, the correct advice to X concerning his legal relations with Y.

End of Examination

FINAL EXAMINATION IN CONTRACTS A (Law 301)

Second Semester 1959-60

Professor Davis

PART I

TIME ALLOWED: ONE HOUR AND A HALF

1. Fred Facile was both a general insurance agent and a real estate broker. Val Vendee wanted to buy a hotel building from X by paying the purchase money in yearly installments over a 15-year period. Vendee asked Facile to negotiate the purchase and promised him a \$500 commission if the deal could be made on the desired terms. Vendee also promised Facile that the latter "could write all fire insurance on the building for each year during the 15-year payment term." Facile replied, "Okay." Facile then effected the purchase from X as Vendee wanted it, and the latter paid Facile the \$500 commission and the premium for the first year's fire coverage. At the end of that year Vendee refused to renew the insurance through Facile, who immediately filed a lawsuit to recover his commission on the anticipated fire insurance premium for the second year. While this action was pending the parties negotiated a settlement whereby Facile voluntarily dismissed the suit and Vendee promised to procure a \$50,000 life insurance policy on himself through Facile's agency. Vendee's application for such a policy was rejected at the life insurance company's home office because the medical examination disclosed that Vendee had only one kidney. Facile now seeks your opinion regarding his rights against Vendee.

2. The Heartburn Grocery Company placed a large jar of beans in its show window, and through a widespread handbill distribution announced a guessing contest concerning the number of beans in the jar. The handbills stated, "The person guessing nearest the actual number in the jar will be awarded \$1,000 in groceries. No purchases necessary to enter." Inside the store each contestant was supplied a form reading, "Enter your bean guess and your name and address, neatly and legibly printed, on the reverse of this form and drop it in the container at the back of the store." At the end of the contest an accurate count showed there were 7,468 beans in the jar. Tom Ptomaine, whose name was sloppily but legibly printed on his entry form, had guessed 7,467. Ben Burp, who, as it turned out, was unaware of the handbills, had entered a proper form guessing 7,469 beans. While the store manager and other contest judges were deliberating, Felix Fuddy (a wealthy uncle of Ben Burp) approached the store manager and said, "I hear by the grapevine that you have a close one in the bean contest. My nephew Burp is a proud pauper who won't take help from me or anybody else. If he should happen to win this contest -- fair and square, you understand -- I'll pay \$1,000 into the Heartburn Company's Employee Pension Fund." Shortly thereafter, Burp was declared the winner.

Discuss the legal rights and duties of all parties involved in this situation.

End of Part I

FINAL EXAMINATION IN CONTRACTS B (LAW 302)

Second Semester 1958-1959

Professor Davis

TIME ALLOWED: THREE HOURS

1. A, a professional entertainer, entered into a contract with B, a producer of theatrical attractions, for a singing engagement in a theater owned by B. The engagement was to begin on January 1, 1959, and to continue for three months. A's salary was to be \$1,000 per week. A knew when he entered into the contract that B had already assigned all the rights to the receipts of the show to Z and that B's only means of paying A was a deposit in B's account in the First State Bank, then in excess of the amount promised. On November 20, 1958, A became ill with pneumonia, and B was advised by competent medical authority that A would not be able to sing before April 1, 1959. Accordingly, and without notifying A, B hired X, another singer, to fill A's place in the show. On December 20, 1958, B cancelled the show because, on that date, a fire totally destroyed his theater. A made a very rapid recovery from his illness, and was ready, willing, and able to start the singing engagement on January 1, 1959. Naturally, B declined A's offer to fulfill the contract. A thereupon got another singing engagement at \$500 per week for the first three months of 1959. He now sues B for breach of contract. In his defense B sets out all of the above facts and, in addition, proves that the First State Bank became insolvent on December 30, 1958, with the consequence that B's deposit therein was completely wiped out. Decide the case.

2. Brotherhood X, a labor union, and the Acme Tool Company entered into a collective bargaining contract to run from January 1, 1958, through December 31, 1960. The contract contained a number of wage and hour provisions, and agreements on working conditions, grievances, and union security. Included was a "holiday clause" in which the Company promised to pay all employees their regular hourly wages for eight hours, but without work, on a number of specified holidays, among them July 4. Various commitments by the Brotherhood included a "no strike" clause whereby the union agreed not to call or authorize a strike by union members for any cause during the life of the contract. On Thursday, July 3, 1958, the Brotherhood called a strike and its members left their jobs at noon on that day. The Company immediately, on July 3, notified the Brotherhood in writing:

We consider your action a flagrant violation of our collective bargaining contract, which continues in full force through December 31, 1960. We stand on the contract and intend to hold you fully responsible for any damages we may sustain as a result of your breach.

On the following Sunday, July 6, the Brotherhood called off the strike. Its members resumed their jobs on Monday morning and have continued to work regularly thereafter. However, a dispute arose over the question whether the strikers were entitled to full pay for July 4. The Brotherhood concedes that the strike was a breach of the "no strike" clause, and makes no claim for any other wages possibly accruing while its members were out on strike.

(a) You are appointed by the Brotherhood and the Company to arbitrate the dispute, pursuant to arbitration provisions in the collective bargaining contract. What should you decide?

(b) Assume that the contract contains no arbitration provisions, the facts otherwise being as stated above. Beaver, a non-union employee of the Acme Company on July 3 and thereafter, declined to cross the Brotherhood's picket line in order to resume his work after lunch on the afternoon of July 3 and again declined to do so

on Saturday, July 5. Beaver can prove that on both occasions he was peaceably advised by several picketers not to cross. He now sues Acme for full pay allegedly due him for the afternoon of July 3, for all of July 4, and for his usual working hours on July 5. What decision?

3. T negligently injured V in an automobile accident. While V was undergoing treatment for his injuries in Mercynary Hospital, an adjuster for I (T's liability insurance company) offered V \$5000 as settlement in full of T's liability. V agreed, gave the adjuster a signed release, and received a memo in which I promised to pay V \$5000 by check within 30 days in full settlement of V's claim against T. The adjuster had been authorized by I to make this settlement. V was discharged from the hospital two days later, at which time the hospital demanded payment of his stated bill (\$4000). Having no funds, V gave the hospital his own negotiable promissory note for \$4000, payable to the hospital's order in 30 days, and at the same time, as security for the note, assigned to the hospital the memo he had received from I's adjuster. The hospital at once assigned the memo and negotiated the note to H, who took as a holder in due course of the note. A few days later V falsely represented to I's adjuster that he had lost the settlement memo and needed another in order to finance some new furniture. The adjuster issued to V another memo identical to the first, and V assigned it to the Migraine Furniture Company to secure a contemporaneous \$5000 conditional sale contract for the purchase of furniture. Migraine immediately notified I of the assignment. Later these additional facts were discovered: (1) Because of a clerical error the hospital in its stated bill had overcharged V in the amount of \$1000. (2) T was a twenty-year-old "hotrod" who had been charged with manslaughter and was free on appearance bond at the time V was injured. T's uncle, representing that he was T, had fraudulently obtained the insurance policy with I on T's car.

The following litigation has developed, the first parties named being the respective plaintiffs. Decide each case:

- (a) V v. I
- (b) H v. V
- (c) H v. I
- (d) Migraine v. I

4. Daddyo Rumble (24 years old and a senior at the University of Illinois College of Law) ordered from Sullivan's Haberdashery a custom-made suit to be tailored from a rare cloth called "Looperuna." Delivery was to be made in 30 days, at a price to Rumble of \$150. Two weeks later Rumble notified Sullivan that he would not take the suit. Sullivan sued for damages, alleging the following items: (a) Labor: \$40. (b) Five yards of rare Looperuna patterned for Rumble and now worthless: \$50. (c) Commission due Sullivan's salesman at 10%: \$15. (d) Profit on sale: \$35. (e) Loss of advertising value: \$10,000. Item (e) was explained by an allegation that Looperuna was not known or worn in the community, that it could be obtained only by purchasing a bolt of 5000 yards at \$2 per yard, and that Sullivan had undertaken the job in reliance on the popularity it expected to result from Rumble's purchase--all of which was well known to Rumble. The defendant answered, admitting a breach of contract, but alleging that plaintiff was under a duty to finish the suit and that damages should be limited to the difference between the market price and contract price of the finished garment. Over defendant's objection, the court permitted the introduction of evidence to establish each item of damage. In regard to item (e), a salesman testifying for plaintiff said that when the risk had been explained to Rumble, the latter had replied, "I must have Looperuna or lose my social standing."

How should the trial court instruct the jury? Give reasons.

NAME _____

NO. _____

FINAL EXAMINATION IN CONTRACTS B (Law 302)

Summer Session 1959

Professor Stone

TIME: 4 HOURS

Part I

Please do not write anything but your name on the first page of your examination book; start writing your answers on page 3.

Begin each answer with a statement of your decision or your conclusions. Discuss all points and issues involved, and give reasons fully but succinctly. If you think that you must make assumptions as to law or fact, state what they are. LARGE CREDIT WILL BE GIVEN FOR BREVITY, CLARITY, COHERENT ORGANIZATION, AND GOOD ENGLISH PROSE.

1. C, a contractor, and O, an owner, entered into a contract for building 30 houses in a development which O was promoting. The contract, which was signed last September, provided that performance and payment were to be completed by June 1, 1959. O was to make payments in installments at certain stages of construction. The total amount was \$200,000.

By April 1, 1959, construction had been so delayed that both O and C estimated that it could not be completed before the middle of July. O had made payments totalling \$135,000. After revising their estimate of the completion date, but without any new agreement, C proceeded with the work, but O began to fall behind in his payments. By May 15 he was \$5,000 behind, by June 1, \$10,000 behind, and by June 15, \$12,000 behind with reference to the contract provisions for payments at various stages of completion of the work. O was approaching insolvency, and on June 16 he entered a contract with X whereby he assigned to X all his rights under the contract with C, and X assumed all of his obligations. C was notified promptly of this transaction. Two days later, C wrote both O and X that payments had been so far delayed and uncertainty about the future had become so great that he would not continue to perform the contract.

Is C entitled to further payments? If so, from whom, and measured how? Why?

2. The Splendiferous Mining Company operates two mines: at the Boom Boom Mine, uranium is extracted; at the Glitter Mine, gold.

a) The chief markets for uranium presently are military use and use as a fuel in the generation of electric power and the propulsion of ships. A tiny amount is used in medical research. Splendiferous executives are well aware that the military market will diminish, since it apparently would not profit any country to stockpile more bombs than it could deliver, or more than would, if delivered, destroy this small planet. They are also aware of the conduct of research in thermo-nuclear power, the object of which is the development of a process whereby electric power could be generated at a very low cost by using the hydrogen in sea water as a fuel. None of the latter research has yet gotten to first base, however; predictions are current that no workable system will be developed before the year 2000. No uranium can be sold for any purpose without a license from the Atomic Energy Commission. Factors of foreign policy, economic philosophy, and even partisan politics have been known to affect decisions of federal administrative agencies such as the AEC.

The Boom Boom executives are considering leasing some valuable uranium deposits on a royalty basis from an owner who demands minimum royalty payments on 60,000 tons of ore, whether actually mined or not, per year for ten years, and 30,000 tons per year thereafter for twenty years. They are also considering the hiring of a

mine manager who demands a 10-year contract at a very high salary. He is worth the price if the mine can be operated to produce the foregoing tonnages, but not if production would be at much lower rates. It now appears that existing contracts with the AEC, subject to termination at the AEC's option, and the predicted demand of power installations planned or now under construction here and abroad, will furnish a sufficient demand to allow Splendiferous successfully to market the quantities of uranium concentrates that would be produced from the foregoing tonnages of ore.

The executives ask your advice concerning the effect, if any, on such long-term commitments of such fortuities as a break-through on hydrogen power, an embargo on uranium exports, or a shut-down of the mine as a result of radiation hazards. Advise them.

b) The Glitter Mine is located in Canada and is free to sell its production anywhere in the free world. The price of gold in free world markets is determined by the price paid by the U.S. Treasury, now approximately \$35 per ounce. Some monetary experts believe that the U.S. will soon be forced to increase the price of gold - i.e., devalue its currency; others disagree violently. If the price were to be increased, Glitter's profits from sale at the higher price would go up precipitously.

(1) Some current contracts call for future deliveries to customers at \$35 per ounce. Will Glitter have to continue to deliver at that price if the U.S. Treasury should increase the price to \$40 per ounce? to \$70? to \$105?

(2) Other contracts call for payment of the market price in Toronto. In the event of devaluation, will the old or the new price be due on gold which has been mined, refined, and poured into bars which have in turn been loaded onto armored trucks hired by a customer to carry the bars to the latter's depositary? Why?

(3) A substantial amount of Glitter's production is cast in bars and sold to Canadian banks, which in turn sell depositary receipts to U.S. citizens. The owner of such a receipt thus hedges against devaluation of the U.S. dollar. Present law prohibits the possession of gold, except for jewelry, dental or comparable use, in the United States, but it is legal for U.S. citizens to buy it and keep it in other countries. Their doing so creates a strain on the U.S. dollar, however, and some fear that the Congress or the Treasury may require U.S. citizens to surrender to the Treasury all depositary receipts. If it does so, the price of gold bars will drop.

Will the banks who have ordered gold bars from the Glitter Mine be required to take and pay for them if the U.S. government should suddenly destroy the market for them by making it illegal for U.S. citizens to buy or own depositary receipts?

(4) Some of the bars sold to the Last Royal Bank of Montebec have in turn been sold to a ring of smugglers who deliver them at enhanced prices to boarders in France, Egypt, India, and other countries where it is illegal to import or possess gold. Must Glitter, upon discovery of this fact, continue to make deliveries under its contract with Last Royal?

FINAL EXAMINATION IN CONTRACTS B (LAW 302)

Second Semester 1959-60

Professor Davis

TIME ALLOWED: THREE HOURS

1. On April 1, 1960, S, a supplier, entered into a written contract with the Ajax Truck Co. to supply the latter with a specified number of metal castings for use in trucks to be made by Ajax. Plans and specifications for the castings were included in the contract. June 15, 1960, was fixed as delivery date for the castings. In full payment, Ajax agreed to convey to S on or before June 1, 1960, a described plot of land owned by Ajax. On April 3, 1960, S made a written contract with M, a manufacturer, whereby M agreed to manufacture at an agreed cash price and to deliver to Ajax on June 15, 1960, the castings required by S's contract with Ajax. M experienced extreme difficulty in locating certain raw materials necessary in the manufacture of the castings. M finally located these materials in the hands of Z, who demanded such a high price for them that if M purchased them from Z he would suffer a substantial loss on the contract with S. On May 26, 1960, M notified S that because of the current raw materials situation he would be unable to make castings in time for June 15 delivery, or at any other time within the foreseeable future. On May 27, 1960, S wired Ajax as follows:

Sub-contract with M for castings has collapsed.
No other sub-contractor in sight. Am at a loss
to know how to proceed.

Ajax Truck Co. consults you today concerning its legal rights and duties in light of these facts. What advice would you give?

2. On December 30, 1959, X sent Y a telegram reading: "Our sales manager died today. I want you to take his position and start work January 2. Salary \$24,000 per year." On receipt of this telegram Y called X by long distance telephone and said: "I am interested in your offer. Is any incentive arrangement in prospect?" X replied: "For many years I have on January 2 paid my sales manager a bonus, three percent of the amount by which my sales during the preceding twelve months exceeded those of the year before. I would expect to do the same for you." Y then said: "Let me think about it overnight." The next morning, December 31, 1959, Y wired X: "Re your telegram and our telephone conversation, I accept." On January 2, 1960, Y arrived at X's office and assumed his duties as sales manager. Y proved to be incapable in X's estimation (but not in Y's) of performing satisfactorily the planning and supervisory functions of his position. On February 1, 1960, X discharged Y. Y was paid nothing. Assume that Y consulted you on February 2. Indicate with your reasons the rights, if any, of Y against X.

3. C, a contractor, and O, an owner, entered into a contract for building thirty houses in a development which O was promoting. The contract, which was signed last September, provided that performance and payment were to be completed by May 1, 1960. O was to make installment payments at specified stages of construction. The contract price was \$200,000. By March 1, 1960, construction had been so delayed that both O and C estimated that it could not be completed before the middle of June. O had made payments totalling \$135,000. After revising their estimate of the completion date, but without any new agreement, C proceeded with the work but O began to fall behind in his payments. By April 15 he was \$5,000 behind, by May 1, \$10,000 behind, and by May 15, \$12,000 behind with reference to the contract's progress payment terms. O was approaching insolvency; and on May 16 he made a written agreement with X whereby he assigned to X all his rights under the contract with C, and X assumed all of O's obligations. C was notified promptly of this transaction. Two days later, C wrote both O and X that payments had been so far

delayed and uncertainty about the future had become so great that he would not continue to perform the contract. Is C now entitled to further payments? If so, from whom, and measured how?

4. B, a theatrical producer, and C, a designer, signed a document reading:

C will design the costumes, scenery, and backdrops for B's forthcoming stage production "Moscow Rock 'n Roll." B will pay C \$1,000 plus 4% of the net profits of the production before taxes, the percentage to be paid monthly. C will get credit for design in all advertising and programs, C's name to be in type half the size of the star's name.

As C knew, X for several years had been B's principal financial backer and was expected to supply the funds needed to produce "Moscow Rock 'n Roll." C also knew that Olga Minsk had been signed to star in the show. Two days after the above agreement was signed, X and Olga were killed in a widely publicized common disaster. C completed the promised designs, et cetera, expending 150 hours on the work, and tendered them to B. B rejected the tender. He informed C that he had made a strenuous but unsuccessful effort to raise the funds needed to produce the play, and would therefore be unable to produce it. Shortly thereafter B informed his attorney that just before execution of the document set out above, he had said to C: "If for any reason this play does not open, I will pay you only \$5.00 per hour for the time you have spent on design for it, up to a limit of \$500"; that C had replied, "I understand"; that C now demands payment according to the terms of the document. Indicate with your reasons whether B is under a duty to pay C \$1,000 or any other amount.

End of Examination

NAME _____

NO. _____

FINAL EXAMINATION IN CONTRACTS B (Law 302)

Summer Session 1960

Professor Stone

TIME: 4 HOURS

PART I

Start writing the answers to the questions in Part I on page 3 of your examination book. Do not write anything but your name on the first page.

Analyze each question and plan your answer before you write. Begin each answer with a statement of your decision or your conclusions. Discuss all points and issues involved, and give reasons fully but succinctly. If you think that you must make assumptions as to law or fact, state what they are. LARGE CREDIT WILL BE GIVEN FOR BREVITY, CLARITY, COHERENT ORGANIZATION, and GOOD ENGLISH PROSE.

1. (Suggested time: 25 minutes) The Hi Building Corporation leased part of the ground floor of its building to Tom Tenant. The lease prohibited Tenant from using the premises for the sale of soft drinks. The reason for this prohibition was that Hi had given another occupant of the building the exclusive right to sell soft drinks in the building. Tenant agreed in the lease to reimburse Hi for any damages that might be legally assessed against it as a result of any breach of any of Tenant's covenants. Also, the lease provided that for any month during which Tenant committed a continuing violation of any covenant relating to his use of the premises, he would pay as rent 25% more than the sum provided in the lease.

Tenant installed a soda fountain, and has sold soft drinks for the past three months. He tells you, his lawyer, that he did so only after the tenant with the exclusive right to sell soft drinks began to sell cigarettes, and that the landlord's representative had assured him at the time the lease was signed that no other tenant had the right to sell tobacco products.

Hi has brought an action against Tenant for additional rent for the past three months and has also requested an injunction against further sales of soft drinks by Tenant. What plausible defenses can you offer on Tenant's behalf? What is the likelihood of success for each defense?

2. (Suggested time: 35 minutes) The Fixit Furniture Company is a family corporation, all of the stock being owned in equal shares by Al Fixit and his two sons, Bill and Charlie. In order to finance a plant expansion, the Company borrowed \$250,000 from Bruno Bucks. As a condition of making the loan, Bucks demanded a provision that he could gain a controlling interest in the corporation under certain circumstances, the stock to be transferred to his son Peter. The loan agreement was signed by the three Fixits as well as by the Company and by Bruno Bucks. It provided, ". . . each of the subscribing stockholders agrees to transfer 51 per cent of the shares he now owns to Peter Bucks on demand by Bruno Bucks. In that event the obligation of the Company to Bucks shall be reduced by the fair value of the shares so transferred. Bucks may make such demand at any time he deems the financial position of the Company insecure as it is reflected in the books of the Company."

Some time later, Al Fixit died, leaving his shares in equal portions to his two sons and their sister, Dolly. Each brother purchased half of Dolly's shares. Their purchase agreement with her provided that ". . . purchasers assume all obligations connected with ownership of these shares. They will be held subject to demand by Bruno Bucks in satisfaction of his claim."

Bucks subsequently gave notice that he deemed the financial position of the Company insecure, though in fact its prospects had never been rosier. He demanded that 51 per cent of all of the shares owned by Bill and Charlie be transferred to him. (He had fallen out with Peter.) On being refused, he sued for specific performance of their agreement.

What issues of substantive law are presented by this lawsuit and how should they be resolved?

3. (Suggested time: 60 minutes) Madame Diva, a famous foreign singer, contracted with Best Productions, Inc., to present concerts in the Chicago Music Hall on three successive evenings in August. As compensation, she was to receive one-half of the box-office receipts for these performances. Best was to provide the hall, the accompanist, and the publicity.

State and explain the legal consequences of the following facts and events. Each numbered paragraph represents a separate contingency.

- (1) Because of a large number of cases of poliomyelitis, the City, by a valid exercise of its police power, closed all theaters in Chicago for a period including the dates of the scheduled performances.
- (2) During rehearsal on the afternoon before the first performance, Madame Diva flew into a rage because the accompanist played a certain passage too loudly. She slapped his face, whereupon he walked out. It was too late to arrange for another accompanist for the first concert, as a result of which it had to be cancelled, and the ticket money refunded.
- (3) After giving the concerts, Madame Diva was arrested by immigration authorities, charged with violation of the terms of her visa, and held for deportation. She was then released on bail pending a hearing on the charges. She hired a Chicago lawyer to assist her and promised to pay him \$3,000 if he could make it possible for her to fulfil scheduled engagements over the next year; otherwise he was to receive nothing. The attorney went to Washington, where, in a number of interviews with members of Congress, he convinced them that this country's cultural level would be uplifted by the presence of and performances by a singer of the caliber of Madame Diva. The Congressmen then sponsored a private bill to allow Madame Diva to stay and work in this country as a non-quota immigrant, the dispensation to be retroactive to the date of her original entry. The bill passed Congress and was signed by the President. Madame Diva refused to pay the lawyer.
- (4) Before they signed their contract, Best informed Madame Diva that its lease with the owners of the Chicago Music Hall required Best to present at least three performances each week, and that Best expected to present no other performances during the week of Madame Diva's scheduled concerts. The contract contained no reference to Best's lease. On the first day of the week in question, Madame Diva unjustifiably repudiated the contract. Best was unable to arrange for other performances that week, and the lessor thereupon terminated Best's lease because of that breach. Best sues Madame Diva for one-half the ticket money refunded, plus \$25,000, the estimated value of its lost leasehold.

PART II - Essay Questions

1. Cap, Inc., is an Illinois corporation engaged in the manufacture of caps. Of its 15,000 authorized and 10,000 issued common shares, 7,450 have always been held by Dan Dart, president of the company, 100 by Paul Pry, and the remainder by others. Dart, his wife, and his 22-year-old son, Dow, are the three directors. For many years no formal directors' meetings have been held and no shareholders' meetings at all have been requested or called. On December 31, 1958, Dart, whose salary had been \$12,000 a year for the previous five years, decided, in view of his and the company's performances, to increase his benefits. After taking the matter over with his wife, he notified all shareholders on March 1, 1959, that his salary for the calendar year 1959 had been raised to \$24,000, that he had taken \$2,000 as a cash bonus for services "above and beyond the call of duty" for 1958, and that he was taking a stock option to purchase 5,000 shares of Cap, Inc., at any time prior to his retirement for \$5 a share. Paul Pry, who is almost impecunious, consults you on March 5, 1959, about what he could do in this situation. Advise him, discussing the merits of and defenses to any claims he may have and to any action he could take.

2. Art Able is president of Werl, Inc., a corporation engaged in the manufacture of laundry machinery in Werlburg. Ben Bar, a retired millionaire, is a friend of Able. These two believe, on the basis of information known to Bar and told by him to Able, and on their estimate of the economic future of the Werlburg area, that the land on which the Werl general office is located, if put together with surrounding contiguous properties, will probably be worth, in about fifteen years, four times its present known and established market value. Each owns outright, or controlled through their families and close friends at the annual meeting held about two weeks ago, 22,500 of the 100,000 authorized, issued, and outstanding shares of Werl, the book and market value of which on the Midwest Stock Exchange, where it is traded daily, is \$10 a share. Able is one of the seven directors elected at the annual meeting. Bar is not a director. Their plan is to get Werl, Inc., to sell its land and buildings to a new company, Abar, Inc., which would be organized and owned by them and which would then formulate and offer Werl a long-term lease-back of these properties. Thereafter Abar would acquire the contiguous properties, which Able has assured Bar that Werl could not afford to do. List the legal steps that will have to be taken to effect these measures, indicating, where a vote may be required, the proportion of the vote needed; and, as counsel for Able and Bar, indicate by what different means they could accomplish their aims, pointing out the possible obstacles and liabilities which will have to be overcome or minimized with respect to each of the means employed.

3. Ben Bran, who devoted virtually all of his time during the year 1958 to the idea and working model of a three-dimensional amateur still color camera, caused an Illinois corporation, Clik, Inc., to be duly formed on December 2, 1958, to exploit the camera. He persuaded ten others to invest a total of \$100,000 under an arrangement whereby they received 5,000 of the 15,000 authorized no-par common shares and Bran received 5,001 shares in exchange for the camera model, idea, and patent application rights, which were valued on the books at one dollar. Bran and two of the investors were duly elected directors and Bran was chosen president. On January 2, 1959, Bran, who regarded the margin of his control as slightly precarious, acquired an additional 1,500 shares by persuading the board to issue him 500 shares and to sell him 500 treasury shares for \$15 a share in cash, and by purchasing, on the same day, 500 shares in a private transaction for \$17.50 a share. On February 2 the market price of the shares was \$30 a share, and Bran sold out his entire holdings for a flat \$200,000. He remained, however, as director and president. By May 2 Clik shares, partly on news of Bran's sale, had sagged to \$10 a share. Disturbed by reports that actions against him are threatened by various angry present or former shareholders, he asks you on what possible theories and for what damages or relief they might proceed against him and with what probability of success. Write a brief memorandum advising him.

FINAL EXAMINATION IN CORPORATIONS (Law 324)

Second Semester 1959-1960

Professor Stephens

Part II

The facts stated in the two questions in this part are deliberately sketchy. You will have to make assumptions or alternative assumptions, which will indicate additional information that you would have to have to answer concretely the questions presented. Work this out before you begin to write. If you find that time does not permit you to deal in this way with all facets of the problems presented, comment briefly at the end of your answer on the matters you are not discussing fully.

1. Oliver was the proprietor of a successful, small, short-order type restaurant in a large city. Early in 1958 he decided to abandon the old location and to build three new distinctive establishments. During the course of the year he accomplished this at a cost of \$60,000 for constructing and equipping each new restaurant. The venture exhausted both his cash and his credit. However, before the end of the year he was able to interest Williams in investing some money in the business. Accordingly, Food Corporation was formed, to which Williams contributed \$30,000 cash in exchange for 300 shares of \$100 par value stock. At the same time, 700 shares of \$100 par value stock were issued to Oliver in exchange for all his right, title and interest in the three restaurants, and the corporation assumed a \$40,000 mortgage on each restaurant. Oliver, Mrs. Oliver, and Williams were elected directors and elected themselves President-Treasurer, Vice-President, and Secretary, respectively. Thereafter, Oliver continued to run the business much as he had his sole proprietorship. Only Oliver and Mrs. Oliver attended directors' meetings in the ensuing months, though Williams received proper notice thereof. Oliver used substantial Food Corporation funds to make payments on his residence, to pay for a new car and to discharge an old personal debt. But the business did not prosper and is now insolvent and in bankruptcy. Jones, who had extended several thousand dollars credit to Food Corporation for supplies, consults you with respect to possible liability of Oliver, Mrs. Oliver, and Williams. Advise him, but bolster your advice with a critical analysis of legal principles bearing on his problem.

2. Owens was president and a principal shareholder of Land Mines, Ltd. After World War II its business dwindled and its only plant stood virtually idle until 1958. Knowing this, Roberts approached Owens and told him about Fireworks, Inc., which Roberts said he was about to organize. After some discussion a lease was drawn up and executed by Owens and Roberts under which Land Mines, Ltd., leased to Fireworks, Inc., the Land Mines plant for \$10,000 per year for twenty years. Roberts did in fact organize Fireworks, Inc., although the executed lease never was removed from his personal safe after the date of its execution. The Fireworks board, which included Roberts, passed a resolution to pay the first year's rental on the plant without being acquainted with other terms of the lease. It is not clear that there was ever any formal action on the lease within Land Mines, Ltd., although a dividend paid to the shareholders after receipt of the first year's rent was accompanied by a full explanation of the transaction. As matters turned out, fireworks did not sell much better than land mines; by January 1, 1960, Fireworks, Inc., had ceased business operations and was insolvent and in bankruptcy, although Roberts continued his personal business successes in a number of other ventures. Even before 1960, Fireworks, Inc., had informed Land Mines, Ltd., that it would make no payments on the lease beyond the first year's rental already paid. Discuss the relative rights and obligations of the individual and corporate parties, including in your discussion a critical analysis of the legal principles bearing on their problems.

NAME _____

NO. _____

FINAL EXAMINATION IN CREDITORS' RIGHTS (Law 344)

Summer Session 1959

TOTAL TIME: 3 HOURS

Professor Looper

PART I

(Suggested Time: One Hour)

This part consists of 70 "objective-type" questions. Answers should be indicated on the question sheets, which should be turned in with the examination booklet containing your answers to Part II.

Assume that A, B, and C are general partners on an equal basis and that all have joined in a bankruptcy petition in behalf of themselves and their partnership; that the partnership assets are worth \$10,000 and the partnership debts equal \$15,000; that the individual estates of A, B, and C are respectively:

A: \$25,000

B: 10,000

C: 5,000

and that the individual debts of A, B, and C are respectively -

A: 15,000

B: 20,000

C: 10,000

1. The bankruptcy filing fees should total \$_____.
2. The partnership creditors should receive \$_____.
3. A's creditors should receive \$_____.
4. B's creditors should receive \$_____.
5. C's creditors should receive \$_____.

Assume that X Corp. leased premises from A under a 10-year lease, beginning January 1, 1950, for \$12,000 annual rental, payable monthly. Rent was paid through December 31, 1953. X Corp. filed a petition on March 1, 1954. Its receiver and then its trustee remained in possession of the premises until May 1, 1954, when the trustee rejected the lease. The reasonable rental value of the premises was then \$500 monthly.

6. How much should be allowed for accrued rent prior to bankruptcy? \$_____
7. How much should be allowed for the use and occupation of the premises by the receiver and trustee as a first-priority expense of administration? \$_____
8. How much should be allowed on the claim for future rent? \$_____
9. Assuming that the lease was only for five years beginning January 1, 1950, how much should be allowed on the claim for future rent? \$_____.

The following events in an ordinary involuntary bankruptcy are listed out of chronological order. Renumber them (1 through 16) according to correct sequence:

- ___ 10. Discharge
- ___ 11. Adjudication
- ___ 12. Trustee's final accounting
- ___ 13. Jury trial of contested issues of insolvency and commission of act of bankruptcy
- ___ 14. Filing of verified answer
- ___ 15. Appointment of receiver
- ___ 16. Filing of involuntary petition in bankruptcy
- ___ 17. Deadline for filing of proofs of claim
- ___ 18. Closing of estate
- ___ 19. Liquidation of unliquidated or contingent claims and evaluation of security held by claimants for purposes of final allowance
- ___ 20. Issue of subpoena addressed to alleged bankrupt
- ___ 21. Election of trustee(s)
- ___ 22. Opening of first meeting of creditors
- ___ 23. First meeting examination of bankrupt
- ___ 24. Filing of schedule of property, list of creditors, etc.
- ___ 25. Allowance or disallowance of claims for voting purposes

True-False
(Circle the correct answer)

The following may file voluntary bankruptcy petitions:

- T F 26. Life insurance company
- T F 27. Federal savings and loan association
- T F 28. Stock corporation engaged in the gas and electric business
- T F 29. Farm owner whose principal income is derived from non-farm investments
- T F 30. Workman earning \$2,000 wages per year

The following constitute "acts of bankruptcy":

- T F 31. Concealment of one's property with intent to hinder, delay or defraud creditors
- T F 32. Transfer, while insolvent, of portion of one's property to secure contemporaneous advance of funds

- T F 33. Transfer, while insolvent, of portion of one's property to creditor on account of antecedent debt where such creditor had no knowledge of insolvency
- T F 34. Subjecting one's property, while insolvent, to a mortgage lien to secure a contemporaneous loan, and permitting such lien to continue for more than thirty days
- T F 35. Making, while solvent, a general assignment for benefit of one's creditors
- T F 36. Appointment of receiver to take charge of a parcel of one's extensive land holdings while one is insolvent
- T F 37. Admission in writing by one, while solvent, of his inability to pay his debts and his willingness to be adjudged a bankrupt

The following claims (existing as of the time of filing of the bankruptcy petition) are provable:

- T F 38. Tort claim for technical conversion not reduced to judgment
- T F 39. Judgment for wilful conversion
- T F 40. Quasi-contractual claim for conversion
- T F 41. Claim for anticipatory breach of executory contract
- T F 42. Claim for negligent performance of contractual duty neither reduced to judgment nor the subject of a pending action

The following claims (existing as of the time of the filing of the bankruptcy petition) are dischargeable in bankruptcy:

- T F 43. Sums due the Federal Government by the bankrupt for last year's income tax
- T F 44. \$5,000 due a former wife as back alimony
- T F 45. Claim for assault and battery reduced to judgment
- T F 46. Claim for assault and battery not reduced to judgment
- T F 47. \$5,000 due an officer of a bankrupt corporation for back salary
- T F 48. Claim for negligence reduced to judgment
- T F 49. Claim for negligence not reduced to judgment but the subject of an action pending at the time of the filing of the bankruptcy petition
- T F 50. Claim for negligence neither reduced to judgment nor the subject of a pending action
- T F 51. Unscheduled debts where the creditor had no notice or knowledge of the bankruptcy proceedings

- T F 52. Unscheduled debts where the creditor learned of the bankruptcy proceedings ten months after the date first set for the meeting of creditors
- T F 53. Unscheduled debts where the creditor learned of the bankruptcy proceedings five months after the date first set for the meeting of creditors

- T F 54. On January 5, 1952, B filed a petition in bankruptcy, receiving a discharge on April 3, 1952. On February 1, 1958, B again filed a petition in bankruptcy. B may not receive a discharge in the second proceeding.
- T F 55. The bankruptcy of a corporation releases its stockholders, as such, from any liability under state law.
- T F 56. Where a petition is filed in behalf of a partnership by less than all of the general partners, the petition must allege that the partnership is insolvent.
- T F 57. In a civil contempt proceeding, upon certification by a referee, the burden of proof is proof beyond a reasonable doubt.
- T F 58. Chapter X of the Bankruptcy Act deals with arrangements.
- T F 59. In determining the existence of a preference, the "greater percentage" requirement relates only to the final effect upon liquidation.
- T F 60. A transfer of property of the bankrupt to a bona fide purchaser for a fair equivalent value, made within the interval between petition and adjudication, may be good as against the trustee.
- T F 61. The trustee in bankruptcy brings a bill in equity before the referee to set aside an alleged fraudulent chattel mortgage under which the mortgagee had obtained possession of the property. If the mortgagee makes timely objection, the referee has no jurisdiction to set aside the mortgage.
- T F 62. A homestead acquired after the creation of a debt may generally be asserted as an exemption, even against the levy of the antecedent creditor.
- T F 63. Most courts hold that creditors of a fraudulent transferor are subordinated to intervening lien creditors of the fraudulent transferee.
- T F 64. Creditors of a factor are uniformly held to have no right as against the consignor to levy on the consigned goods.
- T F 65. In Illinois a levying creditor of a conditional vendee will normally prevail over a conditional vendor whose conditional sales contract is unrecorded, even though the creditor cannot show that he extended credit in reliance on reputed ownership.
- T F 66. In Illinois the return of an execution nulla bona is a prerequisite to maintenance of a creditor's bill by a judgment creditor.
- T F 67. Under the Uniform Fraudulent Conveyance Act, the holder of a promissory note may not, before dishonor of the note by the maker, attack as fraudulent a conveyance by an accommodation endorser.

- T F 68. In a non-bankruptcy liquidation, a federal tax lien will be subordinated to the lien of a prior recorded mortgage.
- T F 69. In Illinois the priority of execution liens is dependent upon the order of delivery of the writs to the proper officers rather than the order in which levy is made.
- T F 70. In Illinois a delinquent judgment debtor is subject to imprisonment where the judgment is obtained on a tort involving malice, but a contract judgment debtor is generally immune to body execution unless he fraudulently conceals assets or wilfully refuses to surrender same.

FINAL EXAMINATION IN CRIMINAL LAW (Law 309)

Second Semester 1958-1959

Professor Bowman

TIME: 3 HOURS

I. Dolly Dawn obtained a preliminary decree of divorce from her first husband. Under the law of the particular jurisdiction, the decree did not become final until one year from the date it was granted and the divorced persons could not legally marry again before the day following the final decree date. Dolly's decree became final on August 7, 1958, and under the law she could legally marry again on August 8, 1958. Acting in good faith and under the mistaken impression that the state Office of Vital Statistics was responsible for interpreting and administering the divorce law as to when decrees became final, in May 1958 she wrote to the Office of Vital Statistics inquiring if she was correct in thinking that her decree would become final on August 7 and that she could marry again on that date. The Office of Vital Statistics had the ministerial responsibility for keeping records of all marriages and divorces in the state but no legal responsibility for interpreting or administering the marriage and divorce laws. However, a Supervisor in the Office replied to Dolly's inquiry on the official letterhead of the Office of Vital Statistics, advising her that she was correct in thinking that her decree would become final on August 7, 1958, and that she could marry again on that date. He signed it: "Caleb M. Foreman, Supervisor of Divorce Records." Dolly married again on August 7, 1958. She was indicted and tried for bigamy before the court without a jury. Her defense before the court was based on three primary grounds:

- (1) Mistake of fact
- (2) Mistake of law
- (3) No criminal intent

Discuss the validity of each ground of defense and how each should be decided. Why?

II. Roy Deegan and his wife, Julia, had been having difficulty for two years with their neighbor, Thomas Jolley, over Julia's "rambling" rose bushes which "rambled" over the dividing fence each spring and summer, entwining themselves in Jolley's honeysuckle hedge. Jolley repeatedly asked Roy and Julia to stake and guide the "runners" in another direction. Julia insisted that they must be permitted to grow "naturally," and that they did no harm to Jolley's hedge. She often added, "That old hedge is too high anyway." One day in May 1958 Roy was working around the roses along the dividing fence when Jolley came out and began cutting off the rose "runners" which were on his side of the fence and beginning to wrap themselves around his honeysuckle. This he had a legal right to do. However, while he was so cutting the offending "runners," Roy Deegan objected strenuously and said that Jolley was not a "... decent neighbor for a man to have." Jolley used considerable profanity toward Deegan and finally said, "Everybody knows that you and Julia are nothing but selfish slobes and not fit to live with honest folks." At that point Deegan said, "That does it! I'll teach you to talk about my wife that way." Deegan walked rapidly to his house, which was located about 100 feet away. He went inside the back door to the kitchen where Julia was busy preparing lunch. She asked, "What's the matter?" Roy replied, "I'm so mad I can't see straight; that jerk next door just called you a slob. I'm going to get my rifle and teach him a lesson." While talking, Deegan was getting his high-powered rifle out of the hallway closet just off the kitchen. He returned to the kitchen, sat down at the kitchen table and began taking the rifle out of its cover. He then went back to the closet and obtained a handful of steel-jacketed shells for the rifle. He returned and sat down at the table and began loading the rifle. Julia placed a cup of coffee on the table and said, "Here, drink some coffee. That guy is always shooting off his mouth. Don't pay any attention to him." Deegan laid the rifle on the table and began sipping the coffee, saying, "Well, maybe so, but I don't like to be talked to that way, or to have him say things about you. Besides, he's

cutting off your roses." Julia said, "He is? Why that no-good pipsqueak; he deserves to be shot. Go out and do it right now. We'll show 'im." Roy went outside with his rifle and walked toward Jolley, who was still working at the dividing fence. When Deegan was about fifteen feet from Jolley, Deegan stopped, raised his rifle and fired at Jolley. The bullet went through Jolley, seriously wounding him, and hit and killed John Jolley, Thomas' twelve-year-old son who had joined Thomas and who was standing directly behind Jolley. Deegan had not seen John and did not know he was there.

While Jolley was still in serious condition in the hospital, Roy and Julia Deegan were indicted, tried, and convicted of

(1) Conspiracy to kill Thomas Jolley

(2) Murder of John Jolley

Each prosecuted separate appeals urging reversal. On appeal, what decision on each? Why?

III. David Washburn was an experienced crane lift operator with some twenty years of experience. He was employed as such by a contractor constructing a Fine and Applied Arts Building and Museum for the University of Illinois. The crane was in operation on the south side of the building under construction, adjacent and in close proximity to a busy university street which carried a constant flow of vehicular and pedestrian traffic. After Washburn had been working on the job for some months and was thoroughly familiar with the working conditions and surroundings, he came to work one morning slightly intoxicated but not noticeably so. His crane was located in the space between the building under construction and the busy university street. During the morning he was engaged in lifting heavy plumbing equipment from the bed of a truck parked on the side of the university street to the unenclosed second floor of the building. As he levered one hoist of heavy equipment from the truck bed, he heard a noise behind him in the crane cab which indicated that the machinery was not functioning properly. He turned to locate the noise so that he could report it. In turning he levered the hoist in the opposite direction so that it swung out over the university street, on which many law students were then hurrying to class. When he turned back to position and noted that the hoist was over the street, he quickly kicked at the emergency pedal to disengage the automatic controls and give him manual control of the swinging hoist. In kicking at the emergency pedal he missed it and kicked the "rapid descent" lever. The heavy plumbing equipment then descended rapidly, hitting and killing instantly a commerce student who was then riding his bicycle along the university street. Washburn was indicted, tried, and convicted of manslaughter. He appealed. What decision? Why?

IV. Robert Morrison was engaged in a complicated confidence game selling stock in a "moose pasture" in Canada, which he alleged to be rich in uranium deposits. His headquarters were in Chicago, Illinois. Henry Tobbrook was his attorney in Chicago and was familiar with Morrison's illegal promotions. After Morrison had been operating for some months, collecting large sums of money from persons throughout the United States, he learned that his operations were under investigation by a Congressional committee. He asked Tobbrook how he could avoid criminal responsibility. Tobbrook advised him to go to Canada. Morrison agreed to do so. Before leaving, Morrison took \$30,000 in cash from a safe in his home and asked Tobbrook to go with him to the bank. Tobbrook did so and carried the satchel containing the money from Morrison's home to the bank, where he gave it to the bank teller, who counted it. While the teller was counting the money, Morrison told him to deposit it to Tobbrook's account and Tobbrook made out the deposit slip and handed it to the teller. Subsequently, Tobbrook was indicted, tried, and convicted of receiving stolen goods, the \$30,000 deposited to his account in the bank. He appeals. What decision? Why?

FINAL EXAMINATION IN CRIMINAL LAW (Law 309)

Second Semester 1959-1960

Professor Bowman

TIME: 3 Hours

I. Peter Case determined to kill his wife's lover. Pursuant to such design he purchased a .38 caliber revolver and cartridges. On the day he had decided upon for the deed, he loaded the revolver, stuck it inside his belt, buttoned his jacket over it, and went to the restaurant and bar where he had been told his wife regularly had been meeting Clarence DeMure. He arrived at the establishment about 1 p.m. and sat at one end of the bar where he could watch two entrances, the barroom and adjoining grill area. He began drinking whiskey and sodas, consuming, according to the bartender's testimony, fifteen to twenty one-ounce drinks between 1 and 6 p.m. At approximately 6 p.m. Peter's wife and Clarence entered the grill together and walked on into the bar area and up to the bar before they saw Peter. Peter was "quite drunk" and had given no indication of seeing either his wife or Clarence until his wife exclaimed, "Why, Peter, what in the world are you doing here?" Peter raised his head and tried to get off the bar stool. As he did so his jacket, which had become unbuttoned, opened and his wife screamed, "Look out, he's got a gun!" A stranger sitting alongside Peter glanced downward, glimpsed the gun butt sticking out of Peter's waistband, and threw both arms around Peter, holding Peter's elbows and arms pinned tightly to his sides until the bartender summoned a police officer from the grill area, who disarmed Peter and took him to the station. During the whole period from the time Clarence and Peter's wife walked into the bar area until after Peter had slept approximately six hours in a jail cell, no one heard Peter say anything intelligible, although he seemed to be mumbling something most of the time until the police put him on the cot in the cell. He was indicted and tried for attempted murder. His attorney requested the court to instruct the jury that if they found that

- (1) Peter had abandoned his intent to kill by the time his wife and Clarence entered the grill, or
- (2) when Clarence and Peter's wife entered the grill, Peter was too drunk to know what he was doing,

then, and in either event they, the jury, should find Peter not guilty. The court refused to give the instruction. After verdict of guilty and sentence, Peter appealed, alleging as error the trial court's refusal to give the instruction indicated. What decision? Why?

II. Joseph Devaney was a third-year student at the University of Illinois in Urbana, Illinois. His permanent home was in New York City. In April 1959 he began thinking about cheap transportation home at the end of the semester. According to his subsequent statement, he ". . . had a vague notion that if I did not do so well on my final exams and could obtain a good car I might just keep it and go on to Canada or some place and not go home or return to school, since I didn't like college very well anyway." During the latter part of April he contacted Professor Hadd of the University, who was going to England for the summer and remaining there on a sabbatical leave during the fall semester. He proposed to Professor Hadd that he, Devaney, would drive Professor Hadd's car to New York and there deliver it to the steamship company for transshipment to England, and that Professor Hadd would then be free to fly to New York, or even to London if he wanted to save time. Professor Hadd thought it was a good idea and since time was important to him, he made arrangements to fly to London and for the Atlas Steamship Company to receive his 1958 Buick from Devaney at Pier 90 in New York on June 10, and to ship it on to London. With Devaney he agreed to pay all car expenses for the trip to New York but Devaney would pay his own personal expenses for meals, lodging, etc.

According to plan, on June 9 Devaney obtained the car from Professor Hadd in Urbana. Prior to departing for New York, however, he drove to the local Western Union office and sent the following wire to the Atlas Steamship Company in New York:

"Car will be delivered to you at Pier 90 tomorrow according to previous arrangements. Personal plans have been changed, however, and must spend three months in Canada before going to England. Cancel previous shipping instructions on automobile and deliver it to your pier warehouse in Quebec where I will pick it up. (Signed) Professor E. H. Hadd, University of Illinois."

Devaney then drove the car to New York and delivered it to the Atlas Steamship Company at Pier 90 on June 10, obtaining a receipt therefor from the company employee. On June 25 Devaney appeared at the Company warehouse in Quebec, Canada, showed the warehouse superintendent the receipt, stated that he was Professor Hadd, and obtained the automobile. Four months later he was arrested in Newark, New Jersey, still in possession of the car.

Devaney was extradited to Illinois in due course and held for the action of the grand jury in the Circuit Court of Champaign County. Disregarding the procedural problems as to place of the offense, trial, etc., discuss briefly for the grand jury Devaney's possible guilt or innocence in regard to the following offenses:

1. Larceny
2. Embezzlement
3. Larceny by bailee
4. Obtaining property by false pretenses
5. Confidence game

Give reasons. Is it possible that he is guilty of no offense? Why?

III. Alexander Petrone and Harvey Jasper were jointly indicted in the Criminal Court of Cook County, Illinois. The indictment contained two counts. Count 1 charged Petrone and Jasper with conspiracy to commit burglary, and Count 2 charged them both with burglary. At Jasper's trial the evidence tended to show that Jasper and Petrone planned to steal the day's receipts from the tavern where Jasper worked. On the agreed night Jasper closed the tavern at 2 a.m., the regular time, but, according to plan, left Petrone hidden inside. Jasper made it a point to greet the parking lot attendant and call attention to the time, 2:05 a.m., and did the same with the night clerk at his apartment hotel at 2:40 a.m. At approximately 3:55 a.m. Petrone, who had gathered up all the money Jasper had conveniently left for him, \$488.92, set off the burglar alarm at the tavern and departed. When both were arrested in Jasper's apartment about 10 a.m. the same morning, the money was found in a coffee canister in the kitchen. Petrone confessed and testified for the state at Jasper's trial. The state nolle prossed Count 1 as to Petrone, and after his plea of guilty to Count 2, the court granted him probation. Jasper was convicted on both counts. On Count 1 he was sentenced to one to three years in the penitentiary, and on Count 2, to one to five years in the penitentiary, the sentences to be served consecutively. On appeal from his conviction Jasper urged two grounds for reversal:

- (1) As a matter of law he could not be guilty of burglary as charged in Count 1.
- (2) Assuming that he was properly convicted on both counts, as a matter of law he could not be required to serve any part of the sentence under either Count 1 or Count 2.

What decision on each of his contentions? Why?

FINAL EXAMINATION IN CRIMINAL PROCEDURE (Law 33-)

First Semester 1958-1959

Professor Bowman

TIME: 2 HOURS

I. On September 23, 1957, Charley Ray was indicted in the circuit court of Rock Island County, Illinois. The indictment consisted of four counts. The first charged burglary (unlawful entry) of a warehouse of the Mississippi Fuel Corporation with intent to steal its property. The second count charged larceny of \$78.35 in money, the property of the Mississippi Fuel Corporation. The third count charged larceny of a Sheaffer pen and desk set of the value of \$62.50, the property of John Morris. The fourth count charged arson of a warehouse (described the same as the warehouse described in count one) of the Mississippi Fuel Corporation. The place and time of all four offenses was alleged to be the city of Rock Island on the evening of August 10, 1957, between the hours of 6:45 p.m. and 11:15 p.m.

A jury found Ray guilty "as charged in counts one and four," and he was sentenced to the penitentiary for a term of one to fifteen years. On June 18, 1958, appearing pro se, Ray prosecuted a writ of error in the Supreme Court of Illinois, alleging the following errors:

- (1) The indictment was fatally defective because it was multiplicitous.
- (2) The third count of the indictment was fatally defective because the property was not sufficiently described.
- (3) The trial court erred in overruling defendant's motion to suppress certain evidence which the police had found in defendant's home and seized without a search warrant.
- (4) In instructing the jury the court did not adequately define and distinguish the offenses of burglary and larceny.
- (5) The jury was not polled.

No bill of exceptions, report of proceedings, or transcript was filed in time and the clerk of the trial court certified to the Supreme Court only the common-law record. Based on the common-law record only, what ruling on each of the above allegations of error? Why?

II. On January 18, 1958, Jonathan Spencer was arrested on a warrant of the United States District Court for the Eastern District of Illinois at Danville for a violation of the federal narcotics act. After preliminary hearing before a commissioner, he was released on bail pending action by the federal grand jury.

While Spencer was free on bail he was arrested in Urbana, Illinois, and indicted in the Champaign County circuit court for larceny of a motor vehicle. On March 19, 1958, he pleaded guilty to the latter charge. On April 2 the circuit court of Champaign County found Spencer guilty in accordance with his plea and entered judgment accordingly. On the same date, before sentence, Spencer requested probation and the case was continued for the purpose of investigation.

On April 5, 1958, Spencer was indicted by the federal grand jury for violation of the federal narcotics act, and continued on bail pending trial. On June 5, 1958, he pleaded guilty to the federal indictment and requested probation, which was granted for a period of two years. He was released on probation the same day.

On June 11, 1958, his request for probation in the circuit court of Champaign County was denied and he was sentenced in accordance with the statute to a period

of three to ten years in the penitentiary. On June 12 he was transferred to the state penitentiary at Joliet and incarcerated therein to serve his sentence.

On June 15, 1958, Spencer's attorney went before the United States District Court in Danville and secured his discharge from the penitentiary on a writ of habeas corpus, on the ground that he was within the jurisdiction of that court.

On December 16, 1958, Spencer filed a motion in the circuit court of Champaign County to vacate its judgment of April 2 and for leave to withdraw his plea of guilty on the following grounds:

- (1) The court was without jurisdiction to enter the judgment.
- (2) The plea of guilty was mistakenly entered because the State's Attorney had promised Spencer that he would be granted probation on a plea of guilty.

In the alternative, Spencer, in his motion, requested the court to:

- (a) Suspend its sentence of June 11, set aside its denial of probation, and grant Spencer's request for probation.

As State's Attorney for Champaign County, state all of the arguments you would make in opposition to Spencer's motion. Give the reason for each argument.

III. Pursuant to lawful instructions from the Secretary of State, the Illinois State Police, who have the arresting authority of any other law enforcement officers in the state, set up a road block at University and Wright streets on Route 45, in Champaign County, to stop all motor vehicles and inspect drivers' licenses. They were instructed to issue a summons for violation of the motor vehicle code to any driver who did not have a valid license. While so engaged on a bright, sunny afternoon in July 1958, Officers Stewart and Thompson stopped the automobile owned and driven by Leroy Trees and asked to see his driver's license. While Trees was fumbling for his wallet and license, Officer Stewart's casual gaze came to rest on some familiar-looking pieces of paper in a box on the back seat. Stewart said to Trees, "What are those pieces of paper?" After some hesitation Trees replied, "Policy slips." Stewart said to Officer Thompson, "Get 'em." Thompson opened the back door, took the box containing the slips and handed it to Stewart. After examining the slips Stewart said to Trees, "We're taking you to the station; follow the squad car." At Stewart's suggestion Thompson got into the front seat beside Trees, who followed Stewart to the Champaign Police Station.

While Stewart and the Champaign Desk Sergeant were questioning Trees, Officer Thompson conducted a further search of Trees' car, and, found, concealed under the back seat, a quantity of narcotics. When he took the narcotics in to Officer Stewart and the Desk Sergeant and told them where he had found them, Stewart said, "That does it. We were going to book you for illegal possession of policy slips but now you're really in trouble." Then to the Desk Sergeant, "Lock him up and book him for illegal possession of narcotics."

Trees was subsequently indicted in Champaign County circuit court for illegal possession of narcotics. Prior to trial Trees' attorney moved the court to suppress the narcotics found by Thompson under the back seat of Trees' car.

- (1) What decision on the motion to suppress? Why?

Assume that the motion is granted:

- (2) May the State, by any method, obtain review of the ruling? Why?

TIME: 2 HOURS

I. Mazie Polk kidnaped three-year-old Bobby Akers for ransom in Chicago, Cook County, Illinois, and took him to Waukegan, Lake County, Illinois, where she killed him on May 20, 1958. She was captured in Waukegan on June 1, 1958, and returned to Cook County. She was indicted by a Cook County grand jury on June 25, 1958, and by a Lake County grand jury on July 1, 1958. Both indictments were identical and in two counts. The first count of each indictment was for kidnaping for ransom (which carries a death penalty in Illinois), and the second count of each was for murder. At her arraignment in the Criminal Court of Cook County on July 20, 1958, Mazie pleaded not guilty and stated that she was without counsel or funds to employ one. The court assigned the Public Defender to represent her and set the trial for September 15. Bail was refused. Mazie refused to accept the Public Defender as counsel and insisted that she desired "a good lawyer." At the trial, when asked if she were represented by counsel, she replied, "No." Mr. Shott of the Public Defender's Office was at the defense counsel table and said, "I represent the defendant, Your Honor." Mazie said, "You do not. I want a good lawyer." The court said, "Counsel has been assigned to you; the trial will proceed." Mazie refused to ask or answer any questions for Mr. Shott, the court, or anyone else throughout the two-day trial. The defense offered no evidence and Mr. Shott made a brief closing argument devoted primarily to explaining to the jury and judge how handicapped he was in trying to do a good job because of Mazie's stubborn non-cooperation. The jury's verdict was, "We, the jury, find the defendant guilty as charged in the indictment." The court rendered judgment on the verdict and on October 14 sentenced Mazie to 99 years imprisonment on Count One, and to life imprisonment on Count Two, the sentences to run consecutively.

Immediately after sentencing by the Criminal Court of Cook County on October 14, Cook County officials delivered Mazie to the custody of Lake County officials. On her arraignment in the Lake County circuit court on October 15, on the indictment returned against her on July 1, 1958, Mazie was represented by the Lake County Public Defender. He entered a plea in bar of trial on the ground of former jeopardy and conviction. The State's Attorney of Lake County argued that the defendant had never been in jeopardy on the same charge because: (1) the trial and conviction in Cook County was unconstitutional and void because the Criminal Court of Cook County was without jurisdiction; (2) the verdict of the Cook County jury was vague, indefinite, and insufficient to sustain any judgment so that even if the Criminal Court of Cook County had jurisdiction a new trial there would be necessary, and, therefore, defendant was subject to trial on the same charge; and (3) the conduct of Mazie constituted separate offenses against Cook County and against Lake County so that she might be prosecuted by both.

What ruling on each of the State's Attorney's contentions? Why?

II. Deposits in the First National Bank of Champaign, Illinois, were insured by the Federal Deposit Insurance Corporation. By federal law, the robbery of such banks is a federal offense. Scott Townsend robbed the First National Bank of Champaign during the afternoon of July 8, 1957. He escaped in a black 1956 Buick sedan with approximately \$24,000 in a canvas bag. An all-points bulletin was broadcast, describing Townsend's automobile, but the description of Townsend was stated to be "uncertain." During the same afternoon, about forty-five minutes after the bank was robbed, the Sheriff of Vermilion County, Illinois, an Illinois state trooper, and a federal F.B.I. special agent were parked alongside highway 150 just west of Danville, Illinois, when they observed a 1956 black Buick sedan pass, heading eastward and containing one person, a middle-aged male driver. The car appeared to be traveling well within the speed limit. The three officers were in a

state police car which was distinctively marked as such. As the state trooper pulled into the highway and came up behind the Buick, the Buick increased speed just as it reached the edge of the Danville business district. In the dense business district traffic, the Buick pulled away from the police car. By the time both cars had cleared the business district, the Buick was several hundred yards ahead of the police car and was traveling approximately 100 m.p.h. The chase continued east on routes 150 and 136 across the state line and into Indiana. Several miles west of Covington, Indiana, the police car forced the Buick off the road and as it came to a stop, the driver, who was Townsend, jumped out and ran into a ravine. The three officers ran after him. As they drew closer Townsend fired his pistol and killed the F.B.I. agent. The state trooper and the sheriff returned the fire and when Townsend threw out his gun and surrendered, they placed him under arrest. They found an empty canvas bag behind a rock where Townsend had been hiding, but no money. They searched Townsend and found \$24,000 in bills stuffed in various pockets and inside his shirt. Although Townsend asked to be taken into Covington, Indiana, the officers refused to do so and took him back to Danville in the state police car, the sheriff driving the Buick back to Danville. They held Townsend in the Vermilion County jail until Champaign County officials came and returned him to the Champaign County jail in Urbana. Subsequently Townsend was indicted

- (1) In the Champaign County circuit court for robbery,
- (2) In the Federal District Court for the Eastern District of Illinois (in which Champaign County is located) at Danville for robbery of a federally insured bank,
- (3) In the Warren County, Indiana, circuit court for murder, and
- (4) In the Federal District Court for the Western District of Indiana (in which Warren County is located) at Crawfordsville, Indiana, for the murder of a federal officer. (The killing of the F.B.I. agent occurred in Warren County, Indiana.)

Indiana sought by the usual procedures to extradite Townsend from Illinois, and the Governor of Illinois approved the request and directed the Champaign County officers to release Townsend to the Indiana officers who would call for him. Townsend petitioned for a writ of habeas corpus in the circuit court of Champaign County and requested his release from custody on the following grounds:

- (1) He had been illegally arrested.
- (2) He was not a fugitive from Indiana and could not be returned there on extradition for trial in either the state or federal court.
- (3) The Champaign County circuit court had no jurisdiction of any offense because the federal law protecting federally insured banks had pre-empted the field of protection of such banks from robbery.
- (4) The search and seizure of the money was illegal.
- (5) The federal district court in Danville had no jurisdiction over him because if he had committed any federal offense in regard to the bank, it would be merged in the greater offense of murder of a federal officer, since both alleged offenses arose out of the same comprehensive transaction.

Assuming that the above contentions are pertinent and proper to be raised by Townsend in attempting to secure his liberty on a petition for a writ of habeas corpus, what ruling on each of the above contentions? Why?

III. On September 1, 1957, Jacob Thompson was convicted of armed robbery. Judgment was rendered the same day by the Sangamon County (Illinois) Circuit Court and Thompson was sentenced to 15 to 20 years in the penitentiary. On August 6, 1959, you visit Thompson, at his request, in the penitentiary at Stateville. He tells you that he was innocent of the crime and that he has since learned the following facts:

1. The deputy sheriff who investigated the crime was in the grand jury room advising the state's attorney while the grand jury heard witnesses regarding the robbery.
2. The deputy sheriff and state's attorney deliberately withheld from the grand jury and from the court and jury at the subsequent trial knowledge that one Albert Hayes had held Thompson's wife and child hostage under threat of death if Thompson did not commit the robbery and bring the money back to Hayes.
3. The petit jury had never been sworn to try the issues in his case.

Assuming that Thompson retained you as his attorney and that investigation reveals substantial support for his statements, what steps or procedures would you initiate in what court or courts to obtain review of the above facts, and what action should the reviewing court direct in each of the alleged errors? You will assume that Thompson was represented by counsel and that his trial otherwise was conducted properly, but that no post-trial motions were made, nor a bill of exceptions filed.

FINAL EXAMINATION IN CRIMINAL PROCEDURE (Law 334)

First Semester 1959-60

Professor Bowman

TIME: 2 HOURS

I. A duly constituted grand jury of Madison County, Illinois, returned an indictment in the circuit court of said county charging that Leonard Atwood, judge of the county court of said county, while then and there acting as such judge had the power and authority to admit to bail persons charged with criminal offenses and to forfeit for payment into the general fund of the county the amount of bail bonds on which bailed persons failed to appear as required. It was further charged that on divers and sundry occasions Atwood had entered orders of forfeiture in specific cases wherein the accused failed to appear, but subsequently, and in violation of his duty and responsibility as judge of said court and in violation of the statutes in such cases made and provided, he had entered or caused to be entered orders vacating the orders of forfeiture so that such bail bonds were never forfeited and the sureties thereon were never required to pay into the county fund the amount of the bond, so that the people of the county were illegally deprived of such funds through the unlawful acts of Judge Atwood. A second count of the indictment was substantially to the same effect, charging that Judge Atwood conspired with certain persons illegally to deprive the county of large sums of money which it was entitled to receive under the bail bond forfeiture laws of the state.

Judge Atwood filed a plea in the circuit court of Madison County, asserting that he was a duly elected judge of the county court and as such immune from indictment and trial for the offenses alleged to have been committed in his office as judge; that the circuit court had no jurisdiction to try him so long as he was the duly elected judge of the county court, and that the circuit court had no jurisdiction of the subject matter set forth in the indictment since all matters set forth therein related exclusively to official judicial acts of Atwood as judge of the county court.

The state moved to strike the "plea" and to require the accused to plead guilty or not guilty. After hearing, the circuit court denied the state's motion to strike and sustained the judge's "plea." The judge was ordered discharged from custody. By writ of error the state sought review of the trial court's order sustaining the plea and ordering the judge discharged. The accused filed a motion in the reviewing court to dismiss the writ of error.

(1) What ruling on the motion to dismiss the writ of error? Why?

(2) Assume that the motion to dismiss the writ of error is granted. Are there any other procedural methods by which the state may obtain review of the trial court's action? Explain.

II. Irvin Waltham was indicted and charged with the murder of Robert Orr. At the trial there was evidence to the effect that Waltham and Orr were frequent fishing companions but often quarreled, sometimes engaging in furious fistfights. On the day of Orr's death, according to evidence in the case, the defendant and Orr were digging for fishworms about 7:00 a.m. A violent verbal quarrel ensued, terminated by Waltham's telling Orr, "From now on you stay away from me or I'll kill you on sight." Waltham then returned to his home, which was about a quarter of a mile from Orr's home. According to Waltham's testimony at the trial, about 9:30 a.m. he left his house to go hunting down in the thicket along the river. He carried with him, fully loaded, a sixteen shot automatic .22 calibre rifle. To get to the woods he had to pass Orr's house, which sat back about fifteen feet from the road. Waltham

testified that as he neared Orr's house Orr appeared in the doorway with a shotgun which he aimed at Waltham saying, "You've been asking for this for a long time; now you get it," and fired directly at Waltham, but missed. Waltham testified that he then raised his .22 and fired seven times. He stated that as he fired Orr stepped back inside the door and fired the shotgun again from inside the house, but missed him. He said that he then turned and ran back up the road to his house where he remained until the sheriff arrived and arrested him about 10:30. The sheriff's testimony was to the effect that all seven of Waltham's shots went through the walls or door of Orr's shack, that three of them hit Orr in the shoulder, chest, and abdomen, causing his death, and that it appeared from the position of the shotgun on the floor beside Orr, from the angle of the shotgun pellets through the door and adjacent wall, and from the position of the door that the door had not been open at any time during the exchange of shots.

At the close of the trial the defendant requested the court to instruct the jury on self-defense, and when the court refused to instruct on self-defense, the defendant requested an instruction on manslaughter, which the court gave. The jury returned a verdict of guilty of manslaughter. The defendant made no post-trial motion but took an appeal (writ of error in Illinois), alleging as grounds for reversal:

(1) The court erred in refusing to instruct on self-defense.

(2) The court erred in instructing on manslaughter, as on the whole evidence in the case, the offense was murder or justifiable homicide.

1. What ruling on (1)? Why?

2. What ruling on (2)? Why?

3. Assuming that the reviewing court rules in favor of defendant on (1) or (2), what disposition of the case should it make? Why?

III. A warrant was duly issued for the arrest of Sam Thomas on a complaint for embezzlement sworn to by Seth Wagner, District Manager of the Acme Distributing Company, Chicago, Illinois. Sam was a collector for the company and instead of turning in the day's collections as he was required to do on Friday evening, September 4, 1959 (preceding Labor Day weekend), he had exchanged the day's collections for a currency exchange draft to the company and had mailed it, together with his resignation. The draft was not delivered until Tuesday, September 8, and the complaint was signed and the warrant issued on Saturday, September 5. Immediately after issuance of the warrant on Saturday morning, an all-points bulletin was broadcast over the Chicago and Illinois state police radio circuits notifying all departments of the issuance of the warrant and asking them to be on the lookout for Sam, and to arrest and hold him for the Chicago Police Department. The bulletin also described Sam's 1959 Oldsmobile.

Saturday afternoon, September 5, Sam was proceeding southward on Highway 45 south of Champaign, Illinois, when Illinois Highway Police Officer Estey came up behind in a patrol car, identified Sam and his automobile as the subject of the all-points bulletin he had previously received over his car radio, and had Sam pull off the highway and stop. When Officer Estey looked at Sam's driver's license and verified the fact that he was the man for whom a warrant had been issued, he said, "You're under arrest. Get out of the car." Sam got out of the car and Estey searched him. Sam asked what it was all about. Estey informed him of the arrest

warrant which had been issued in Chicago and the complaint charging him with embezzlement. Sam denied vehemently that he had embezzled and said Estey had no right to arrest and search him. Estey told him to open the car trunk and when Sam refused, Estey took the keys and opened it. In the trunk were several cartons of electronic parts which had been stolen by Sam from a warehouse in Kankakee, Illinois.

Sam was subsequently returned to Chicago where the charge of embezzlement against him was dismissed on Tuesday, September 8, when the Acme Company received the draft which Sam had mailed the preceding Friday evening. However, Sam was delivered to the sheriff in Kankakee, Illinois, and subsequently indicted there for burglary and grand larceny. Prior to trial Sam's attorney moved to suppress the evidence of the electronic parts found by Officer Estey in the trunk of Sam's automobile. The motion was denied. Sam was convicted and sentenced to the penitentiary. On review by writ of error he urged that the trial court erred in denying his motion to suppress from evidence the electronic parts and the testimony of Officer Estey in relation thereto. What ruling? Why?

FINAL EXAMINATION IN DECEDENTS' ESTATES AND TRUSTS (Law 329)

First Semester 1958-1959

Professor Scoles

TIME: 3 Hours

INSTRUCTIONS

Note: Do not begin until the time indicated.

1. You are furnished a copy of the Illinois Probate Act for reference where pertinent. The provisions of the Act may or may not bear on the problems presented. On occasion, reference is suggested to specific sections, but this is not intended to preclude your reference to other sections if you feel the need. The copy of the Probate Act must be turned in with your examination.
2. Print your name on the front of each examination book. Please do not write on the front of the booklet.
3. Before answering a question, take time to think. Read the questions carefully, analyze the facts, locate the issues, and organize your answer.
4. If you believe there is an error in any question or that additional facts are needed, do not waste time consulting the instructor. State the correction or additional facts you think necessary and answer the question on that basis. Give full reasons in all cases.
5. Each answer should show: a recognition of the problems presented by the facts, the law applicable, your solution and the reasoning relied on by you to support it. Analysis and reasoning, expressed clearly and concisely, are primarily important. Make your answer complete, but do not volunteer immaterial information. Demonstrate not merely your memory, but your ability to think. The value of an answer does not depend so much upon the mere correctness of the conclusion as upon the evidence it displays of the elements above-mentioned. No penalty will be imposed for legibility.
6. Allocate your time so that each question is answered within the time allowed.

FACTS

Lothario Bickerly, age 16, and Prudence White, age 15, were married in June, 1915. The marriage was moderately successful and a considerable amount of property was accumulated by the couple, particularly after the death of their parents. In 1950, Prudence died from overwork while Lothario was on his bi-monthly trip to Las Vegas, survived by Lothario and six children. In 1951, Lothario married Carmen Prolifera, a hardworking girl whom he had met at a night club in Vegas where she was employed as a hat check. In 1956, after five happy years of marriage and six children, including one set of twins, Mrs. Bickerly discovered that Mr. Bickerly was having an affair with a young lady in Calumet City. This discovery led to considerable family differences.

Early in 1957 Mr. Bickerly transferred assets which were in his own name to the Peoria Bank and Trust Co., in trust. These assets were 1000 shares in Atlas Corp., a Delaware corporation, and a dairy farm which he had inherited from his father-in-law White. The Atlas stock was worth \$200 per share and the farm was valued at \$300,000. By the terms of the trust, Mr. Bickerly was to be paid the income for life, at his death the income was to be paid to his six eldest children, who were named, for their lives and at their death the property was to be distributed to their issue. Bickerly reserved the power to alter, amend, or revoke the trust and to appoint the principal by will to anyone, including his estate as he saw fit.

At about the same time in 1957, Mr. Bickerly withdrew \$100,000 from joint bank accounts held in the name of himself and his wife Carmen, and deposited this money in the Springfield First National Bank in an account entitled "Lothario Bickerly, trustee for Allen Bickerly".

Mr. Bickerly executed a will on Sept. 1, 1957, leaving his wife, Carmen, his residence, valued at \$50,000, and a personal bequest of \$10,000. His eldest grandson, Franklin D. R. Bickerly was bequeathed \$30,000 "to start him in life". Whiteacre, valued at \$200,000, was devised to his second eldest son, Blackington White Bickerly. The balance of his estate was given to the Champaign Bank and Trust Co. in trust to pay the income in equal shares to all of his children during their lives, the issue of a deceased child to take the deceased parent's share, and at the death of the last surviving child of the testator to distribute the principal to the testator's then living issue, per stirpes, and if none to the Chicago Home for Wayward Girls. He expressly refrained from exercising any powers of appointment.

When Mrs. Carmen Bickerly learned of the will, she filed suit for divorce on Jan. 2, 1958, alleging adequate grounds and was assured by her attorney that the evidence available was more than adequate under almost any circumstances to obtain a decree in her favor.

In February, 1958, Mr. Bickerly's rich uncle, Don Juan Bickerly, died leaving sixteen children and a will which in addition to providing adequately for the uncle's family, devised a farm valued at \$150,000 to Mr. Lothario Bickerly. In March, 1958, Mr. Bickerly filed an instrument of renunciation in his uncle's estate whereby he renounced any right, title or interest in the farm devised him in the will of Don Juan Bickerly.

On Nov. 1, 1958, while the divorce suit was pending, Mr. Bickerly was killed in a head on collision with J. Wellington Waterloo on Route 150 just west of Danville, Illinois. Mr. Bickerly was survived by eleven of his twelve children and fourteen grandchildren. The assets held in the name of Mr. Bickerly at his death included \$400,000 in securities and real estate valued at \$1,000,000, all located in Illinois. You may assume debts and costs of administration to be \$100,000 and Federal Estate tax to be \$600,000.

After an appropriate period of mourning, Mrs. Carmen Bickerly retains you as attorney for herself and her minor children in the matters relating to the estate. During the estate administration, the following specific problems are raised for your consideration and advice. You may assume the estate is administered in Illinois.

1. The grandson, Franklin D. R. Bickerly, was one of the two surviving children of Mr. Bickerly's deceased child, Esmerelda, who died in April, 1958. Franklin D. R. Bickerly was one of two attesting witnesses to the will of Mr. Bickerly. A clerk of the Champaign Bank and Trust Co. was the other. Mrs. Bickerly asks you what effect this has on the will. How would you advise her? Why? Particular reference to Illinois Probate Act sec. 44 may be helpful.
2. Mrs. Bickerly brings you evidence that upon grandson Franklin's graduation from business school in January, 1958, Mr. Bickerly purchased and gave to Franklin a gasoline station business which cost \$15,000. When Franklin married in March of 1958, Mr. Bickerly paid off the mortgage on the home Franklin had purchased. The balance was \$10,000 at the time the mortgage was satisfied. Mr. Bickerly also gave Franklin \$2,500 on each of his last two birthdays (August 15th) before Mr. Bickerly's death. No other grandchild received similar gifts. Advise Mrs. Bickerly of this significance, if any, of these facts.
3. During your investigation of the execution of the will, you discover that it was executed at the bank with Mr. Bickerly's attorney present. After the testator signed the will, he handed it to the two witnesses at the same table and asked them to sign it. The pen used in signing went dry at this point, as did Mr. Bickerly, and while the pen was being filled at the table by a witness, Mr. Bickerly stepped over to the open door of the room and got a drink of water from the cooler standing in the hall immediately adjacent to the open door. Mr. Bickerly stood in the open door, leaning on the jamb talking to his attorney about another matter while the witnesses were signing the will. He did not see them sign and his back was toward them part of the time. After they signed, they gave Mr. Bickerly the will; he thanked them and they left. Mrs. Bickerly asks you to explain the effect this has upon the estate.
- 4.a. Mrs. Bickerly feels she should have a more substantial part of the estate than was left to her. Assuming the will was validly executed, how would you advise her? Why?
- b. Mrs. Bickerly asks you for an opinion as to her rights in or to any part of Mr. Bickerly's Uncle Don Juan's farm referred to above. How would you advise her? Why?

5. A year after letters testamentary were issued in Mr. Bickerly's estate, Blackington White Bickerly makes a demand upon the personal representative to discharge a purchase money mortgage of \$100,000 against Whiteacre. The mortgage is satisfied with his security and this is the first anyone has said anything about the mortgage. Assume the will contains a provision authorizing distribution in kind and that this mortgage is in addition to the debts previously indicated in the fact statement. What position would you urge on behalf of your clients? What result would you anticipate? Why?

TIME: 3 Hours

INSTRUCTIONS

Note: Do not begin until the time indicated.

1. Print your name on the front of each examination book. Please do not write on the front of the booklet.
2. Before answering a question, take time to think. Read the questions carefully, analyze the facts, locate the issues, and organize your answer.
3. If you believe there is an error in any question or that additional facts are needed, do not waste time consulting the instructor. State the correction or additional facts you think necessary and answer the question on that basis. Give full reasons in all cases.
4. Each answer should show: a recognition of the problems presented by the facts, the law applicable, your solution and the reasoning relied on by you to support it. Analysis and reasoning, expressed clearly and concisely, are primarily important. Make your answer complete, but do not volunteer extraneous information. Demonstrate not merely your memory, but your ability to think. The value of an answer does not depend so much upon the mere correctness of the conclusion as upon the evidence it displays of the elements above-mentioned. No penalty will be imposed for legibility.
5. Allocate your time so that each question is answered within the time allowed.

1. Saunders died about six months ago, leaving his residuary estate to Tams, his executor, in trust to pay the income to his daughter, Della, for her life, with the remainder in fee to his grandson, Garry. The will gave the executor and trustee power to sell assets "as in his discretion he sees fit." The testator left sufficient money in his bank accounts to meet estate obligations. About a month ago, Tams sold 100 shares of Wild Cat Oil Co. stock, which was inventoried in the estate at \$10,000, to his wife Tabby Tams, who was an oil speculator in her own right, for \$12,000. Six days later Tabby Tams sold 50 shares to Dodds, who knew nothing of the prior transfers, for \$25,000 and gave 50 shares to her son Ted Tams, who knew nothing about the prior transfers, as a wedding present. Ten days later Wild Cat Oil Co. brought in three widely separated gushers on a 1000 acre tract which it owned and its stock went up to \$1000 per share. Della and Garry have just learned of these events and come to you for advice as to their rights in the matter. What advice would you give and why?

2. The testator left his residuary estate to trustees to hold one-half in trust to pay the income to his daughter Betty until she attained age 25, at which time she was to receive the principal of the one-half free of the trust. If Betty should die before age 35, the principal of the half was to be paid her estate. The other half of the residue was to be held in trust to pay the income to Betty for life, remainder to the testator's son Charles. The will also directed that the trustee retain all securities owned by the testator at his death. Substantially the entire estate consisted of the municipal bonds of Prairie Hill, Illinois, which the testator had developed during his lifetime. The trust contained the following clause:

"No interest of any beneficiary shall be subject to alienation, anticipation, or attachment by any creditor or otherwise."

Two years after the testator's death, Betty was permanently injured in an accident. She needs constant attendance and her current expenses exceed the trust income by several hundred dollars annually. The trust is producing less than 2% net because of the low rate of interest on the Prairie Hill bonds. The trustee seeks instructions from the court permitting him to sell the Prairie Hill bonds and reinvest in more productive investments and permitting him to invade equally the principal of both trusts to the extent necessary to maintain Betty in reasonable comfort. Betty is now 21 and joins in this request. Charles, age 24 is made a party. What result would you anticipate? Why?

3. S and T had discussed in a general way the possibility of T becoming the trustee of an intervivos trust that S was contemplating setting up. Before anything concrete was agreed upon, T went to Europe on an extended tour. S's circumstances so changed that it became important for him to set up the trust immediately. Without further contacting T, S executed a trust instrument purporting to transfer a large amount of securities to T in trust for B for life, remainder to R. The securities, all bearer instruments or indorsed in blank, together with the trust instrument were delivered to a local bank with a letter saying they belonged to T and directing the bank to hold them subject to T's order. S then took a business trip to Australia. The bank thereafter wrote to T in Europe listing the securities and asking for instructions. T answered saying:

"I am not sure I can carry out S's plans. However I will talk to him next summer about that. Sell the Bolivar Copper stock immediately. Buy Arredonda Common with the proceeds. Hold the rest until I get back."

The bank carried out T's instructions. T returned six months later and after a conference with B and R decided he would not serve as trustee and wrote to the bank saying:

"I find I cannot accept the trusteeship of the S trust. I must refuse to serve. You are directed to hold the securities subject to S's order."

Thereafter T ignored the bank, the securities, and all communications from S, B, and R. Three months later S died before he returned. There had occurred a \$5,000 loss after T's first letter and before his second and a \$10,000 loss after T's second letter. Both losses were such that a reasonably prudent trustee could and would have avoided them.

S's executor sues the bank to recover the securities delivered to the bank, B and R claim the securities as beneficiaries of the trust and file a suit against T to surcharge him for \$15,000, to have him removed as trustee, and request a new trustee be appointed. The Bank interpleads, all parties are joined. What results? Why?

4. Nine years ago Stanton entered into an unfunded trust agreement with the Trenton Trust Company under which he delivered to the trust company certain life insurance policies in the face amount of \$100,000 on his life. The beneficiary designated in each policy was the Trenton Trust Company. Stanton expressly reserved the power to change the beneficiaries of the policies and to amend or revoke the trust. The agreement provided that the trust company, as trustee, acknowledged receipt of the policies and agree upon the death of Stanton to collect the same and to hold the proceeds in trust to pay the proceeds in equal shares i.e. one-fifth to Winifred, his wife, and one-fifth to each of his four children as they severally attained 21, if, but only if, Winifred took under his will. In the event that his wife Winifred renounced his will, the proceeds were to be paid in equal shares to his children. Stanton died last month and his will, which has just been filed for probate, disposes of his net probate estate, consisting of \$100,000 in securities and \$50,000 in realty, in equal shares to his wife and his four children. Trenton Trust Company is executor and is directed to hold the shares of minor children in trust until they reach their majority. Only two of the children are minors, one 15 and the other 17. The widow, Winifred, files a motion in the probate court to require the executor to inventory the proceeds of the life insurance payable to it as assets in the decedent's estate. How would you support her claim? What result would you anticipate? Why?

5. In 1955, a widower, Trapp, validly executed a will dividing his estate between Alvin, a nephew, and his two sons, Bob and Charles. In 1959, Trapp moved to another town and later executed a will leaving his entire estate to his sons, Bob and Charles. The 1959 will contained an express revocation clause revoking all prior wills. After execution of the 1959 will, Trapp phoned his former attorney who had the 1955 will and directed him to tear it up, which the attorney in fact did while Trapp was on the telephone. Trapp commented that he heard the will being torn up. Trapp

recently died and it was only then discovered that the 1959 will was attested by but one person although another disinterested person was present. Alvin offers the 1955 will for probate by filing a photostatic copy which had been retained by the former attorney. What result would you anticipate? Why? The pertinent statute of the state provides:

Sec. 46. A will may be revoked only (a) by burning, cancelling, tearing, or obliterating it by the testator himself or by some person in his presence and by his direction and consent, (b) by the execution of some other will declaring the revocation, (c) by a later will to the extent that it is inconsistent with the prior will, or (d) by the execution of an instrument in writing declaring the revocation and signed and attested in the manner prescribed by this Article for the signing and attestation of a will. Unless the will expressly provides to the contrary: (1) marriage of the testator revokes a will executed by the testator before the date of the marriage; and (2) divorce or annulment of the marriage of the testator revokes every beneficial devise, legacy or interest given to the testator's former spouse in a will executed before the entry of the decree of divorce or annulment, and the will shall take effect in the same manner as if the former spouse died before the testator.

No will which is in any manner revoked shall be revived otherwise than by the re-execution thereof, or by an instrument in writing declaring the revival and signed and attested in the manner prescribed by this Article for the signing and attestation of a will.

FINAL EXAMINATION IN ESTATE AND GIFT TAXATION (Law 352)

First Semester 1958-1959

Professor Stephens

ALLOWED TIME: 3 HOURS

This examination consists of six questions. However, some of the questions have several parts. The relative weight to be ascribed to each question or part is indicated by percentage figures in parentheses throughout the examination. Plan your time to answer all the questions.

Although brief answers are requested do not skimp on reasons, which will be regarded as more important than conclusions for grading purposes. The request for brevity is more a request that you organize your answers with care and that you be concise.

If in order to answer any question you find it necessary to assume additional facts, state what facts you are assuming.

1. On July 1, 1951, when D was 70 years old and well aware of many physical frailties that threatened his life, he transferred outright to his son S as a gift 100 shares of Z Corporation stock with a value at the time of \$50,000. In March 1952 he filed a gift tax return reporting the gift but paid no tax. When D died on July 1, 1953, S still owned the Z Corporation stock, which had risen in value to \$100,000, and had received cash dividends of \$5,000 on the stock.

The federal estate tax return for D's estate was filed by the executor on September 15, 1954. The executor did not elect the alternate valuation date and did not list the Z Corporation stock on the return. On September 1, 1957, the executor filed a claim for refund of estate tax paid, based on the contention that he erroneously had overvalued an asset included in the gross estate by \$10,000. When the claim was denied on July 1, 1958, the executor filed suit for refund in the district court against the district director to whom the estate tax had been paid. On January 1, 1959, while the refund suit was pending, the commissioner issued a notice of deficiency contending that the Z Corporation stock was erroneously omitted from D's gross estate.

Briefly discuss the following:

(5%) a. Circumstances that would support D's payment of no gift tax on the 1951 transfer.

(5%) b. The timeliness of the deficiency notice.

(5%) c. Alternate judicial remedies available to the estate upon receipt of the deficiency notice, assuming it was timely.

(5%) d. Factors that bear on the merits of the commissioner's contention that the Z stock should have been included in D's gross estate.

(5%) e. The amount to be included in D's gross estate with respect to the Z stock if the commissioner is sustained.

(5%) f. Whether the estate would receive a refund on the facts stated if the commissioner's deficiency notice were held to be untimely but he was sustained in his contention that the Z stock should have been included in D's gross estate.

2. In 1954, D transferred property in trust with the income payable to his wife for her life and with the remainder payable to the decedent or, if he was not living at his wife's death, to his daughter or her estate. He retained no power or other control over the trust. D died in 1958 survived by his wife and daughter.

Discuss briefly:

(5%) a. The question whether or to what extent D made a gift subject to tax in 1954.

(5%) b. The question whether or to what extent the trust property should be included in D's gross estate.

3. D was a spendthrift who had been unable to accumulate any property. However, on January 1, 1958, about six months before D's death, his father died leaving his very substantial estate all to D. Upon his lawyer's advice D, who was a comparatively young, married man in excellent health, then created a trust consisting of virtually all the property received from his father, naming himself the income beneficiary for life and providing for payment of the income to his wife for her life after his death. Upon the death of D and his wife, the trust was to be distributed to D's children, if any survived, and if none, to the X charitable foundation. D reserved no power whatever over the trust. He died July 4, 1958, survived by his wife and one child.

Briefly discuss:

(10%) a. The gift tax consequences of creation of the trust.

(10%) b. The extent to which the property will affect the estate tax liability of D's estate.

4. When D died he left an estate of approximately \$200,000, all of which was located in Illinois. He had never made any lifetime gifts of consequence. D, a resident of Illinois, was a member of a large family and had a large family himself, and D's wife was independently wealthy. Accordingly, by will he disposed of his estate by making a \$20,000 bequest to his wife, a \$20,000 bequest to each of his five children, and a \$10,000 bequest to each of his five brothers. The remainder of his estate was left to the X charitable foundation.

(10%) Briefly discuss the liability of D's beneficiaries and his estate for Illinois death taxes. Would your answer be significantly different if about one-half of D's estate consisted of Wisconsin farm land? Explain.

5. In 1950 D established a trust for the benefit of his five children. One child, S, was 35 years old and well on his way to becoming established in business. The other children, all born to D's second wife, were younger and by no means established. To insure an equitable distribution of the trust income dependent on circumstances as they developed, D provided that initially the annual income of the trust should be divided equally among the five children but reserved the right to shift such income interests within the group with the consent of S. D reserved no rights in nor any other powers over the trust and provided that the trust should terminate when the youngest child should reach the age of 30, or in any event in 1970 in the case of the prior death of such child, at which time each child or his estate should receive 20 percent of the corpus. D died in 1958.

Discuss briefly:

(10%) a. On a comparative basis the two provisions of the federal estate tax statute that may bear on the includibility of the trust property in D's estate.

(10%) b. With your answer to part "a" of this question compare the gift tax principles that bear on the determination of when a completed gift occurs for gift tax purposes on facts such as these.

6. The federal estate tax is imposed without any attempt to apportion it among the several states in accordance with their respective populations, as is required with respect to some types of taxes by the Constitution. Moreover, although by statute the proceeds of certain life insurance policies issued by the Veterans' Administration are expressly exempt from taxation, such proceeds have been held to be includible in a decedent's gross estate for federal estate tax purposes.

(5%) a. Briefly discuss the basis for sustaining the estate tax against constitutional attack under the apportionment provision and for interpreting the statutory exemption provision concerning insurance so as not to exclude the proceeds from the gross estate.

(5%) b. Assume that when D died the effective option under an insurance policy on his life, which D could change until he died, called for payments of \$270 per month to his wife for life but for a continuation of such payments for 10 years in any event, the payments to be made to D's daughter or her estate if the wife died before the expiration of 10 years. If the total value of the proceeds was about \$58,000 and the insurance company allocated this \$28,000 to the payments to be made for 10 years certain and \$30,000 to the payments to be made to the wife for her life beyond the 10-year period, how would such proceeds affect the estate tax liability of D's estate?

FINAL EXAMINATION IN EVIDENCE (Law 326)

Second Semester 1958-1959

Professor Cleary

Instructions: Do not read the questions until the 1 o'clock bell rings. Do not write more than one page per question. There are eight questions.

1. In a proceeding by the county to acquire a tract of land by eminent domain, the following evidence is offered:

- (1) By the landowner, the records of the county assessor, placing on the land a value of \$25,000 for tax purposes;
- (2) By the county, a certified copy of a sworn objection filed by the landowner with the county assessor, stating that the assessed value was too high and the property worth only \$10,000.

Discuss the admissibility of these two items of evidence.

2. D is on trial for the murder of a police officer. Assuming that all appropriate objections are made, discuss the admissibility of the following items of evidence, offered by the state as part of its case in chief:

- (a) Testimony of a bank cashier that, one week before the killing of the police officer, the bank was robbed and that he identifies D as one of the robbers.
- (b) Testimony of a detective that he put on the clothes of a priest and visited D in jail; that during the visit D said he had never belonged to any church and was not sorry he had killed the officer.

3. Old man T died in 1958, leaving as his heirs three sons, A, B, and C. By his will, executed in 1958, he bequeathed one-half of his estate to A and one-half to B, the estate consisting of stocks and bonds. C has filed a suit to contest the will, alleging fraud and undue influence. At the trial C calls W as a witness. W was married to A in 1956 and divorced him after T's death. Through W's testimony, C offers to prove that A said to W, a few days before the date of the will, "B and I have made up some false stories about C and are going to tell them to the old man." Assuming that all appropriate objections are made to the admission of this statement, what ruling and why?

4. In a criminal prosecution for selling intoxicating liquor to a minor, D testified on direct that he did not make the alleged sale. On cross-examination, D was asked, "In the year preceding the date of the sale in question, did you at any time sell any liquor to a minor?"

- (1) Objection. Overruled. Answer, "No."

In rebuttal the prosecution called witnesses to prove other sales to minors within the year.

- (2) Objection. Overruled.

Discuss the propriety of the rulings on objections numbered (1) and (2).

5. P, as administrator of the estate of X, sues D for the wrongful death of X. P's complaint alleges that X was crossing the street at a marked crosswalk, in the exercise of due care, and that D negligently drove at an excessive speed and failed to yield the right-of-way, striking and killing X. As part of P's case in chief, W, the widow of X, was called and asked about X's reputation for being a careful man.

(1) Objection. Overruled. Answer, "He was a very careful man."

D then took the stand and offered to testify that he was driving at a moderate speed and that X darted out in front of his car.

(2) Objection. Sustained.

Assuming that all appropriate objections are made, discuss the propriety of the rulings on objections (1) and (2).

6. D Insurance Company issued B a life insurance policy which provided: "The insured, before reaching age 60, may exchange this policy for any other form of policy issued by the company, without medical examination, upon payment of such additional premium as may be fixed by the company." P sued the company for a declaratory judgment that he was entitled to the issuance of a policy providing for monthly payments in the event of disability. P alleged that he was under 60, had tendered the additional premium fixed for the disability policy, and had demanded such a policy, and that the company refused to issue it.

At the trial the company offered evidence that prior to the issuance of the life policy, P had applied for a disability policy, had taken a medical examination, had been shown to have an incipient disability, and had been advised that the company would not under any circumstances issue him a disability policy. Discuss the admissibility of this evidence.

7. T executed a will on May 30 and died on June 1. In a suit to contest T's will, on grounds of mental incapacity, the contestants offered in evidence a hospital record, showing the following entries:

May 25: T admitted as patient. Diagnosis: Dementia praecox
May 27: Patient acting irrationally. Does not recognize relatives
May 29: Patient confined in strait jacket

Discuss the admissibility of these entries.

8. P sues D Broadcasting Company for defamation. At the trial P offers to prove the defamatory statement by the testimony of witnesses who heard it on their radio receivers. The defendant objects on the ground that the broadcast was made by playing a tape recording, which it offers to produce. What ruling and why?

FINAL EXAMINATION IN EVIDENCE (Law 326)

Second Semester 1959-1960

Professor Barnhart

TIME: 3 1/2 HOURS

1. Prosecution of James, vice-president of the First National Bank of Newtown, for receiving deposits while the bank was in a failing condition. (R.S. C.38, §61) Prosecution offers testimony of X, Y, and Z, members of a committee of bankers which, shortly before the acts complained of, had examined the books of the Newtown Bank and the collateral it held as security for loans, for the purpose of determining whether or not the banks they represented should continue making loans to the Newtown Bank. X, Y, and Z are prepared to testify that in their opinion the Newtown Bank was insolvent. Prosecution offers also the testimony of Adams, an agent of an express company, that he had received for collection from a bank in Peoria a draft drawn on the Newtown Bank, with instructions to accept nothing but legal tender, although the custom was to accept exchange drawn on another bank. The defense objects to all of the above. How should the court rule? Explain.

2. (a) Insured was found dead in circumstances equally consistent with accidental death and with suicide. He was insured under a policy which excluded payment of indemnity in case of suicide, and included a double indemnity clause covering death from bodily injuries effected through external, violent, and accidental means. In a suit by the beneficiary of the policy, the plaintiff offered the fact of death and rested. No other evidence was offered by either party except the circumstances in which insured's body was found. How should the case be decided?

(b) Wrongful death action in which the defendant was alleged to have been the driver of the automobile in which the plaintiff's decedent was a passenger at the time of the collision which caused his death. The evidence tended to show that the automobile was driven into the back of a trailer-truck on the open highway. The truck driver testified that immediately after the impact, he walked back to the automobile and found the defendant on the left-hand side of the front seat, his body partially outside the left front door, and that the person later identified as the owner of the car was on the right side of the front seat with his body partially outside the right front door. There was evidence that the owner was fatally hurt and that the defendant received severe chest injuries. The defendant testified that at the time of the accident the owner was driving and defendant was asleep on the right side of the front seat. The trial judge ruled that the testimony of the truck driver as to the position of the defendant after the accident created a presumption that the defendant was driving, but that the direct testimony of the defendant that he was not driving overcame the presumption as a matter of law and required the court to direct a verdict for the defendant. Did the court properly apply the law of presumptions? Explain.

3. X is charged with the murder of S. At the trial the state offers a statement of X. The defense objects that the statement is inadmissible and tells the judge that X is ready to testify, that he was arrested and held for several days without being taken before a magistrate, that he was subject to continuous questioning for long periods by relays of officers, that he was not allowed food or rest during the periods of questioning, and that he constantly requested to be allowed to communicate with his family or friends or to call a lawyer and was not permitted to do so. The defense states further that X will testify

that when he persisted in denying any knowledge of the killing of S, the police threatened to flog him, that he was struck once or twice, that he then agreed to make a statement, that because of exhaustion and fear of physical torture he made a statement, and that only then was he taken before a magistrate and charged with murder. The state is prepared to admit the above facts except for the allegation that X was struck or threatened, and insists that X made the statement of his own free will, uninfluenced by any of the admitted circumstances. The state proposes to offer W, a member of the state's attorney's staff, to testify to the statement of X. The defense objects that a stenographer was present and took down the statement in shorthand, later reduced to writing and signed by X under compulsion, and that the written statement should be offered instead of the testimony of W. There is evidence that X is 19 years of age, illiterate, and of low mentality. What should the court do? What would be X's rights if the statement should be admitted and X convicted?

Later in the trial the defense offers the death certificate for S in which the cause of death is listed as "suicide." Prosecution objects. What ruling?

4. J died after being struck by a hit-and-run driver. Plaintiff, J's administrator, sued D for wrongful death, alleging that D's car with D driving struck J. The answer specifically denied the allegations of the complaint. At the trial the plaintiff offers testimony of R, a police officer, that when R arrived at the scene he found M ministering to J, who was badly hurt, that M said, "I saw the car that hit him and the number was 297013," and that R wrote the number down and now remembers it. M is in court and is ready to testify that he read the license number on the car which he saw hit J, and that he told it to R but does not now remember it. The number 297013 has been established as the license number on D's car. D's lawyer objects to the testimony of R and M. The defense as part of its case offers K to testify that she, a nurse, was at the hospital bedside of one T sometime after the date on which J was fatally hurt, that T told her that he was driving his car and hit J, that he was frightened and drove off without stopping, and that he knew that he was about to die and wanted the truth about J's death known because he did not want an innocent man to suffer for it. K further will state that T died shortly after making the statement. Plaintiff's lawyer objects to this evidence. How should the court rule on these objections?

If the judge sustains the objections, how should counsel preserve the points for appeal?

* * * * *

In the following two questions, state whether the evidence offered is admissible or inadmissible and give brief -- one- or two-line -- reasons for your answers. If the evidence would be admissible for one purpose but inadmissible for another, so indicate.

5. Plaintiff sues for \$25,000 for personal injuries received while a passenger in the defendant's taxi which collided with a truck at an intersection. Plaintiff charges that the taxi driver drove into the intersection without observing a stop sign.

- (a) The taxi driver had a similar accident at another intersection the day before the collision in question.
 - (b) Prior to trial the plaintiff offered to settle for \$500.
 - (c) Testimony of the truck driver that immediately after the collision the taxi driver said, "My brakes didn't hold -- I tried to stop but couldn't."
 - (d) Defendant offers L, an attorney, to testify that after the accident the plaintiff consulted L, who told plaintiff that he had no cause of action and refused to take the case.
 - (e) After the accident the defendant repaired the brakes of the taxi.
 - (f) Plaintiff's wife is called to the stand to testify that plaintiff was not badly hurt.
 - (g) Instruction to the jury: "The plaintiff has the burden of proof in this case, which means that unless you are convinced of the truth of the facts which the plaintiff has presented as establishing his case, then you should find for the defendant. It is not enough that the evidence of the plaintiff preponderates over the evidence of the defendant; it is also necessary that you be persuaded that the plaintiff's evidence is true."
 - (h) Cross-examination of the taxi driver: "How fast were you driving when you approached the crossing?" Defense counsel objects that the answer might subject the witness to criminal prosecution.
 - (i) Letter of one Mrs. M, who was an eyewitness to the accident. Mrs. M wrote the letter to her mother the same day, describing in detail what she had seen. Mrs. M is dead and the letter is in court, available to both parties.
 - (j) Testimony of T, dispatcher for the defendant taxi company, that the driver involved in the accident was one of the most careful drivers and always came to a full stop at stop signs.
6. Prosecution of C for larceny of a radio from the store of one Bell. Plea: Not Guilty.
- (a) Testimony of W that he has known C from boyhood and that C is a person of upright character, always truthful and well-behaved.
 - (b) Articles seized in C's home by the police, who searched it without a warrant, which articles are identified as having been stolen from several shops including that of Bell. The articles do not include the radio.
 - (c) On the day of the alleged theft, C stole other things from stores in the vicinity of Bell's store.
 - (d) Instruction that the presumption of innocence is like a bat flitting in the twilight but disappearing in the sunlight of actual facts indicating the guilt of C.

(e) Testimony that the character of C is bad.

(f) C offered \$100 to the officer who arrested him if he would let him go.

(g) Testimony of a policeman that when questioned about the stolen radio, C said that it was a gift from C's wife.

(h) Testimony of C's wife that on the day of the theft, C came home and surreptitiously concealed the radio in a cabinet.

(i) Question to C on the stand: "Didn't you get fired from your last job for drinking?"

(j) Question of state's attorney to Bell: "Where were you when C picked up this radio and started to sneak out with it?"

FINAL EXAMINATION IN FEDERAL COURTS (LAW 356,

Second Semester 1956-1959

Professor Stone

TIME: 3 1/2 hours

Please do not write anything but your name on the first page of your examination book; start writing your answers on page 3.

Begin each answer with a statement of your decision or your conclusions. Explain your answers. If you think that you must make assumptions as to fact or law, state what they are. LARGE CREDIT WILL BE GIVEN FOR BREVITY, CLARITY, CORRECT ORGANIZATION, AND GOOD ENGLISH PROSE.

I. An action has been brought in the United States District Court for the Northern District of Green by three minority stockholders of a Green corporation, all citizens of the state of Harno, suing on behalf of themselves and all other stockholders of the corporation, against the corporation and three of its directors, citizens respectively of Green, the District of Columbia, and Puerto Rico. The complaint alleges, in addition to the foregoing, that on November 11, 1958, the board of directors entered into a contract with a partnership having its headquarters in the state of Floralina; that by said contract the corporation assigned to the partnership certain patent rights; that the consideration moving to the corporation was grossly inadequate; that the three individual defendants were financially interested in the partnership; and that the plaintiffs purchased their stock in December 1958, without knowledge of the contract, and have made futile efforts (described in detail) to secure remedial action by the board of directors and the stockholders. The complaint prays that the corporation and the defendant directors be enjoined from carrying out the contract.

The original defendants have moved to dismiss under FRCP 23(b). Neither the statutory nor the common law of Green prevents a current stockholder from maintaining this kind of action on the ground that he did not own his shares at the time of the transaction complained of. The Floralina partnership moves to intervene, in the firm name, alleging that it consists of three partners, two of whom are citizens of Floralina and one of Harno. Attached to the motion is a complaint seeking a decree of specific performance of the contract with the corporation. The plaintiff stockholders now move to amend their complaint to add the partnership as a defendant and make the injunctive relief run against it.

Assume that no problem as to jurisdictional amount is presented. What issues are presented by the foregoing motions, and how should they be resolved?

II. In 1956, Congress passed an Act relating to automobile dealers' franchises. Parts of the Act read as follows:

"Section 1. As used in this Act, + + +

"(e) The term 'good faith' shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: Provided, that recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.

"Section 2. An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damages by him sustained and the cost of suit by reason of the failure of said automobile manufacturer from and after the passage of this Act to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: Provided, That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith. * * *"

The Jitney corporation, which produces popular cars, is about to bring out a new and expensive model which it wishes to market through its present dealers. To assure adequate distribution, it proposes to establish a quota system under which each dealer is required to take one of the new cars for each five of the older models he receives. Unless the dealer will agree to this arrangement, Jitney proposes to decline to renew his franchise, or, if the franchise is terminable at will, to terminate the franchise. Many of the Jitney dealers are opposed to this proposed arrangement and have threatened to invoke the statute. Some are located in Michigan, where Jitney, a Delaware corporation, has its principal offices and plants. Jitney, of course, would like a quick, decisive disposition of the whole question, including the issue of the possible unconstitutionality of the statute.

Write a memorandum for Jitney's president explaining how, where and at whose initiative issues relating to the statute's impact, if any, upon Jitney's proposed course of action might be litigated.

III. As you know, Professors Hart and Wechsler disapprove the construction given the Erie doctrine in Guaranty Trust Co. v. York, and subsequent cases. They suggest that the "outcome" test should be supplanted by a substance-procedure test which would classify as substantive "those rules of law which characteristically and reasonably affect people's conduct at the stage of primary activity", and as procedural "those rules which are not of significant importance at the primary stage." Federal courts would presumably follow state substantive rules, but would express their own law on matters classified as procedural.

(a) How, if at all, would the Hart-Wechsler rule have changed the result in each of the following cases?

1. Guaranty Trust Co. v. York (statute of limitations)
2. Cohen v. Beneficial Industrial Loan Corp. (plaintiffs' bond in stockholders' derivative action)
3. Angel v. Bullington (deficiency judgment on mortgage)
4. Klaxon v. Stentor (interest on judgment)
5. Woods v. Interstate Realty (corporation not qualified to do business)
6. Bernhardt v. Polygraph Company (The first three headnotes in the United States Supreme Court report of this case, 350 U.S. 198 (1956), read:

"Petitioner's action against respondent in a Vermont state court, for damages for the discharge of petitioner under an employment contract, was removed to the Federal District Court on grounds of diversity of citizenship. The contract had been made in New York, where both parties

resided at the time, and provided that the parties would submit any dispute to arbitration under New York law; but petitioner had later become a resident of Vermont, where he was to perform his duties. Respondent's motion for a stay of the proceedings so that the controversy could go to arbitration in New York was denied by the District Court, which ruled that the arbitration provision of the contract was governed by Vermont law and that, under Vermont law, the agreement to arbitrate was revocable any time before an award was actually made. The Court of Appeals reversed. Held: The judgment of the Court of Appeals is reversed and the cause is remanded to the District Court.

1. The provision of § 3 of the United States Arbitration Act for stay of the trial of an action until arbitration has been had does not apply to all arbitration agreements but only to those covered by §§ 1 and 2 of the Act (those relating to maritime transactions and those involving interstate or foreign commerce), and there is no showing that the contract here involved is in either of those classes.

2. The differences between arbitration and judicial determination of a controversy substantially affect the cause of action arising under state law and make the doctrine of Erie R. Co. v. Tompkins, 304 U.S. 64, applicable.

3. If in this case arbitration could not be compelled in the Vermont state courts, it should not be compelled in the Federal District Court."

(b) Which rule do you prefer? Why? Or would you prefer some other solution? Why?

IV. The Blue Ridge Railroad, incorporated in Delaware, owns and operates its railroad lines through Tassel County, Iowa. Its main office is in New York City, and it operates railroad lines in seventeen states, including Iowa. It received authorization from the Interstate Commerce Commission and the Iowa State Commerce Commission to improve its lines through Tassel County and to acquire by condemnation any land necessary for such improvement. The relevant Iowa statute provides:

"Any railway incorporated under the laws of the United States or any state thereof may acquire by condemnation or otherwise so much real estate as may be necessary for the location, construction and convenient use of its railway.

"Proceedings to acquire land for such purposes by condemnation shall be instituted by a written application filed with the sheriff of the county in which the land sought to be condemned is located.

"The sheriff shall thereupon appoint six resident freeholders of his county, none of whom shall be interested in the same or a like question, who shall constitute a commission to assess the damages to all real estate desired by the applicant and located in the county.

"Upon the filing of the commission's report with the sheriff, the applicant may deposit with the sheriff, the amount assessed in favor of a claimant, and thereupon the applicant shall have the right to take possession of the land condemned and proceed with the improvements. No appeal from such assessment shall affect this right to possession.

"Any party interested may, within thirty days after the assessment is made, appeal therefrom to the district court of the county by giving the adverse party, his agent or attorney, and the sheriff written notice that such appeal has been taken.

"The appeal shall be docketed in the name of the owner of the land, or of the party otherwise interested and appealing, as plaintiff, and in the name of the applicant for condemnation as defendant, and be tried as in an action by ordinary proceedings."

Pursuant to this statute the Blue Ridge sought to condemn certain lands in Tassel County, Iowa, owned and tenanted by one Cornhusker. After proceeding in accordance with the first four quoted paragraphs of the statute, Blue Ridge took possession of the property and Cornhusker was awarded the sum of \$25,000, which sum was paid to the sheriff by Blue Ridge. Thereupon Blue Ridge took the following steps:

1) Filed a complaint against Cornhusker in the United States District Court for the Southern District of Iowa, which encompassed Tassel County, alleging diversity of citizenship, jurisdictional amount, and the steps taken under the procedure set forth by the Iowa statute, further alleging that the award of \$25,000 was excessive and requesting that damages for the taking of the land be assessed at \$10,000.

2) Filed a complaint against Cornhusker in the United States District Court for the Southern District of Iowa, alleging diversity of citizenship, jurisdictional amount, the authorization to condemn land pursuant to the orders of the two Commissions, and praying that the District Court condemn the land and fix the amount of compensation.

3) Filed an appeal from the assessment in the state court, the District Court for Tassel County, Iowa. The case was docketed there, pursuant to statute, with Cornhusker as plaintiff and Blue Ridge as defendant. Blue Ridge then removed the case to the United States District Court for the Southern District of Iowa.

In the federal District Court, Cornhusker moved to dismiss the two complaints filed in the federal District Court and to remand the case removed to the federal District Court. Write an opinion disposing of the motions and all of the issues raised thereby.

FINAL EXAMINATION IN FEDERAL COURTS (Law 356)

Second Semester 1959-60

Professor Stone

TIME: 3 HOURS

Please do not write anything but your name on the first page of your examination book; start writing your answers on page 3.

Begin each answer with a statement of your decision or your conclusions. Explain your answers. If you think that you must make assumptions as to fact or law, state what they are. LARGE CREDIT WILL BE GIVEN FOR BREVITY, CLARITY, COHERENT ORGANIZATION, AND GOOD ENGLISH PROSE.

I. (Suggested time: 27 minutes) Discuss the soundness of the decision in one and only one of the following cases:

- (a) Skelly Oil Co. v. Phillips Petroleum Co., casebook, p. 769
- (b) Indiana ex rel. Anderson v. Brand, casebook, p. 458
- (c) National Mutual Insurance Co. v. Tidewater Transfer Co., casebook, p. 351

II. (Suggested time: 72 minutes) Lauzier, a citizen of Massachusetts, filed his complaint in the U. S. District Court for the District of Rhode Island on March 29, 1956, against D'Onofrio Construction Co., a Connecticut corporation doing business in Rhode Island. The matter in controversy exceeded the jurisdictional amount. The complaint alleged that plaintiff was injured on May 4, 1955, while working on a scaffold in Newport, Rhode Island, as a result of the negligence of the defendant. On February 13, 1957, D'Onofrio moved for leave to bring into the action as a third-party defendant, Recon Company, Inc., a Rhode Island corporation. Leave having been granted, D'Onofrio filed its third-party complaint against Recon, based on alternative theories of contribution or indemnity, and charging that negligence by Recon, its agents and servants, caused whatever injuries plaintiff had sustained. The demand for contribution placed reliance on the Rhode Island version of the Uniform Contribution Among Tortfeasors Act, which, after establishing a right to contribution, provides in a section added some years after the original Act was passed:

"A joint tortfeasor is not entitled to a money judgment for contribution until he has by payment discharged the common liability or has paid more than his pro rata share thereof. Actions for contribution shall be commenced and sued within two (2) years next after the cause of action shall accrue to the injured person, and not after."

After Recon had secured five extensions of time, on May 28, 1957, it filed a third-party answer, together with a motion to strike from the third-party complaint all reference to a claim for contribution. The motion was based on the contention that the third-party plaintiff had not yet discharged any common liability within two years after plaintiff's cause of action accrued, as required by the Rhode Island statute as a condition for obtaining a judgment of contribution; in resisting the motion, D'Onofrio relied on Federal Rule 14(a).

In actions under the Rhode Island contribution statute brought in federal court before the quoted provision was added, and in actions brought in federal courts in other states where the quoted provision has not been added to the Uniform Act, it has been held possible for a joint tortfeasor to be subjected to a suit for contribution long after the period of limitations has run on a suit against him by the original plaintiff. No Rhode Island decisions have interpreted the new provision, however.

Recon's motion was granted by the District Court on December 4, 1957; the order dismissing the claim for contribution contained a certificate under Rule 54(b) that there was no just reason for delay. D'Onofrio appealed.

(a) Recon moved to dismiss the appeal on the ground that the order granting its motion was not appealable because under Rhode Island practice review of such an order would have to await final judgment. Assuming that Recon correctly stated Rhode Island law and that the trial judge had correctly interpreted the precedents in the United States Court of Appeals for the First Circuit concerning the availability of Rule 54(b) when one of two alternative grounds of recovery has been stricken from a claim, what decision on the motion to dismiss? Why?

(b) Assuming that the motion to dismiss was denied, whether correctly or not, and that Rhode Island practice does not allow for the impleading of third-party defendants as provided for under Federal Rule 14, should the trial judge's order be affirmed or reversed? Why?

(c) While the case was pending in the Court of Appeals for the First Circuit, D'Onofrio and Recon joined in a motion, made on April 30, 1958, to dismiss the complaint on the ground stated in the second sentence of Federal Rule 25(a)(1); an affidavit was attached which showed that the plaintiff Lauzier had died on April 26, 1956, that his widow had thereafter been appointed administratrix of his estate, but that no motion to substitute her as party plaintiff had ever been made. Mrs. Lauzier then made a counter-motion under Rule 25(a)(1) that she be substituted as party plaintiff. (Substitution can be made in the Court of Appeals.)

(i) Assuming that in Rhode Island practice there is no time limit upon the making of a motion for substitution, what disposition should be made of each motion? Why?

(ii) Suppose that a motion for substitution had been made 18 months after Lauzier's death, but that Rhode Island law required dismissal if a motion to substitute were not made within one year of death. What decision? Why?

III. (Suggested time: 45 minutes) The following resolution was adopted by the Conference of State Chief Justices on August 23, 1958:

Resolution on Allocation of Judicial Power

WHEREAS the allocation of judicial power between the states and the nation is largely made by the Judicial Code of the United States; and

WHEREAS the state judicial systems have not heretofore been consulted as to the proper allocation of that power; and

WHEREAS the distribution of judicial power between the state and federal courts does not appropriately reflect the interests of the state judiciaries; and

WHEREAS no substantial revision of the Code has occurred since 1875;

NOW THEREFORE, BE IT RESOLVED that the Chairman of the Conference be directed to appoint a special committee to examine the allocation of jurisdiction between the state and federal courts now contained in Title 28 of the United States Code;

BE IT FURTHER RESOLVED that the committee make recommendations to the Conference for achieving a sound and appropriate distribution of power between the nation and the states.

The special committee has been organized and has asked you to suggest the three areas you consider most appropriate for the committee's initial attention. Restricting yourself to the subject matter covered in this course, what is your advice?

IV. (Suggested time: 36 minutes) Because the widows of federal agents who die in the line of duty are often needy, an appropriate Congressional committee has under consideration a bill which would add a new section, §1350 1/2, to the Judicial Code:

"Section 1350 1/2. Widow's action for death of federal agent

The district courts shall have original jurisdiction of any civil action brought by the widow of any special agent of the Federal Bureau of Investigation, any Treasury agent, or any other peace officer of the United States Government, on any claim arising out of the death of her husband in the line of duty."

Write a memorandum for the committee which will explore and recommend conclusions as to issues of policy and of constitutionality, if any, involved in such a proposal.

FINAL EXAMINATION IN FUTURE INTERESTS (Law 3-6)

Second Semester 1958-1959

Professor Soles

Time: 3 hours

Instructions

- 1) Print your name on the front of each examination booklet. Please do not write anything else on the front of the booklet.
 - 2) Before writing an answer, take time to think. Read the question carefully, analyze the facts, identify the issues, and organize your answer.
 - 3) Analysis and reasoning, expressed clearly and concisely, are primarily important. Legibility is also to be desired.
 - 4) All questions are given equal weight. Allocate your time so each question is answered within the time allowed.
-

1. The testator devised his residuary estate "to the children of Archibald, to be paid when they should respectively attain the age of twenty-one. Each child is to receive the accumulated income on his share when the share is paid to him." At the testator's death, Archibald had three children, Bob, age 7, Clarence, age 5, and Don, age 3. Bob died at age 9 and during the following two years Archibald had two children, Elsie and Fannie. Fifteen years after the testator's death, Archibald had still another child, Gert, and a year later, Clarence the oldest of Archibald's children other than Bob, attained the age of twenty-one. What is Clarence's share and what share do the others have? Why?

2. By her father's will, Doris was given a life estate in \$500,000 and the power to appoint the principal "by will to and among her children or any other kindred who shall survive her in such shares and manner as she shall think proper." In default the property was to pass to Doris' descendants and in absence of such descendants to the "then living heirs" of the donor. In 1940, at the age 27 Doris married Frank, who was then 21. A month after her marriage to Frank, Doris executed a will in which she appointed \$400,000 to her children, should she have any, \$50,000 to her favorite cousin Charles and \$50,000 to Charles' eldest son Edward. Doris and Frank had a particularly happy marriage and one child, a son, was born in 1943. In 1956, the cousin's son, Edward, became involved in a protracted law suit. In 1958, Doris executed a second will, revoking the first. By the 1958 will, she appointed \$200,000 to her son, and \$300,000 to her cousin Charles. In an exchange of letters shortly before the 1958 will was executed, Doris had asked and Charles had agreed that he would make a gift of \$150,000 to Frank after Charles had received the sum appointed to him. Doris was killed in an air crash in West Virginia this spring. The trustee under her father's will has filed a bill for instructions for final distribution of the trust principal. A guardian ad litem was appointed for Doris' son. What should be the positions urged by the parties? What result would you anticipate? Why?

3. In 1922, Adams conveyed ten acres of land from his 160 acre farm to the trustees of a religious organization "to have and to hold as long as the property is used for the church purposes or as an evangelical camp and when no longer used as such the same is to revert back to the original tract of land and its then owners."

Later in 1931, Adams conveyed 150 acres to Mr. and Mrs. Baldwin. In the deed to the Baldwins, the land was described as "the S.W. 1/4 of Sec. 16 excluding approximately ten acres deeded for a church camp in 1922." The Baldwins sold the farm to Chase in 1938 by description similar to that in their deed. Chase has owned and farmed the land since that time. In 1939, Adams conveyed the church camp by quitclaim deed to Baldwins for five dollars (\$5.00). In 1940, the church abandoned the church camp and conveyed it by quitclaim deed to Chase for \$250.00.

In 1941, the Baldwins conveyed the old church camp land to Davis for \$500.00. Since then no one has actively occupied the land. All of the people mentioned have cut wood and hunted on it from time to time. The land is still carried on the assessment rolls as being owned by a charity so no taxes have been paid.

About 1953, oil was discovered on nearby land and in 1954 Chase filed suit to quiet title to the ten acres in himself and Adams and Davis were made defendants and each defendant claimed the land. What result? Why?

4. The testator died in 1956 leaving a will by which his residuary estate was given to trustees "to hold and pay the income from one half to my wife for life and to pay the income from the other half to my daughter, Dawn, for life; remainder to my two sons Able and Baker, their heirs and assigns. In the event of death of either of my sons without issue the whole shall go to the other." The testator was survived by his wife, his daughter, Dawn, his bachelor son, Able, and his son, Baker, who had been married only six months. The widow renounced the will and took her statutory share. Baker died two years later survived by his wife, Carol, to whom he left his entire estate by his will. Able married in 1957 and now has an infant son. Last month Dawn died in an auto accident, survived by her mother who was her sole legatee and her brother Able. Dawn was unmarried. Able has contracted to sell a farm which constituted the bulk of the testator's residuary estate. The buyer questioned the title and Able files a suit to quiet his title. The testator's widow, who is still alive, and Carol, Baker's widow, defend and cross petition for partition. What result and why.

5. Thompson died in 1940, testate. By his will, he gave \$30,000 in general bequests and then gave the residue of his estate to his wife, Wanda, as trustee to pay herself the income for life and at her death, in absence of an appointment the principal was to be paid to his nephew Ralph. The widow was given a general testamentary power to appoint the principal as she saw fit. The residuary trust principal amounted to \$100,000 in negotiable securities when it was turned over to Wanda as trustee. Ralph successfully requested the probate court to require Wanda to post a bond for the "proper administration of the trust and protection of the remainder interests." The bond in the sum of \$100,000 was posted by a corporate surety, Defiance Indemnity Co.. Wanda died recently leaving a will by which she appointed one-half the principal of the trust to Ralph, her husband's nephew, and one-half to her niece, Mary. It has developed that Wanda invested the trust funds in speculative and unlawful ventures and that only \$30,000 remains of the trust assets. Wanda's only assets will amount to \$20,000 in personalty after administration (disregarding any trust litigation) and were bequeathed by her will to her nephew Harry. Ralph and Mary institute proceedings against the Defiance Indemnity Co. on the bond, Harry and Wanda's executor are made parties. Assuming all questions can be litigated in this court, what final result would you anticipate and why?

6. The testator's will provided: "In remembrance of many kindnesses by Philip Potter and his family, I give \$10,000 to the Industrial Trust Co. to pay the income to Philip Potter for life and then to pay the principal in equal shares to the grandchildren of Philip Potter."

Philip Potter is a sprightly widower of 58 with four children ranging in age from 25 to 37. His eldest son, Harold, had two children, ages 1 and 2, at the death of the testator. The other children of Philip Potter do not yet have children. Philip Potter has recently become engaged to a young woman aged 28. The residuary legatee of the testator's will asserts the Potter trust is invalid and passes to him as part of the residue. What is your opinion? Why?

FINAL EXAMINATION IN FUTURE INTERESTS (Law 346)

Second Semester 1959-1960

Professor Scoles

Time: 3 hours

Instructions

NOTE: Do Not begin until the time indicated

- 1) Print your name on the front of each examination booklet. Please do not write anything else on the front of the booklet.
- 2) Before writing an answer, take time to think. Read the question carefully, analyze the facts, identify the issues, and organize your answer.
- 3) Analysis and reasoning, expressed clearly and concisely, are primarily important. Legibility is also to be desired.
- 4) All questions are given equal weight. Allocate your time so each question is answered within the time allowed.

1.

In 1923, a suburban real estate promoter conveyed a strip of land containing 4 1/2 acres to an electric railway company pursuant to an agreement under which service was to be extended to the suburban community from a nearby metropolis. The deed conveyed the land "in fee simple so long as the premises are used for an electric railway. Should the property be used for any other purpose it shall pass to the Village for public purposes." No other pertinent provisions appear in the deed. About six months ago, the electric railway company removed the tracks and station and spent \$250,000 in converting the tract into a parking area which the company last month leased to the village for a 20 year period. The heirs of the grantor file suit against the railroad, the village and any unknown grantees of either, to quiet their title and to regain possession of the tract now worth upwards of a million dollars. What result would you anticipate? Why.

2.

Adams died fifty years ago, leaving a will which provided in part:

"Third. I devise the Fourth Avenue building (valued at \$100,000) and 1000 shares of Pacific Steel (valued at \$75,000) in trust to my trustees heretofore named with full power to sell or retain and invest and reinvest except that no investment shall to be held more than ten years unless a majority of the trustees shall so determine. The trustees shall pay the income to my son Boyd for his life and at Boyd's death, the income shall be paid to the children of Boyd living at Boyd's death as joint tenants for the life of Boyd's surviving child. At the death of the last surviving child of Boyd, the corpus shall be distributed as such last surviving child shall by will appoint among my descendants living at Boyd's death.

"Fourth. All the rest and residue of my estate I give to Charles."

Boyd had three children, the youngest of which was born six months after Adams' death. Boyd died thirty years ago. Boyd's youngest child, Dale, survived his siblings and left a valid will which stated "I appoint Grandfather Adams' Trust to Young." Young is a first cousin of Dale who was alive at Boyd's death. Shortly after Dale's death, Boyd's three grandchildren, each representing a deceased child, and the executor of Charles' estate threatened to sue the trustees if the corpus were paid to Young. The trustees petition the court for instructions. How would you advise the trustees to distribute the property? Why?

3.

The testator left his entire estate to his wife for life, with directions to his executors at her death to "pay \$1,000 to each of my son Sam's children as attain 21 and the balance to the children of my son Paul as attain 21." At the testator's death, Sam had one child Alex, age 11. At the widow's death, Alex was 22 and his only sibling, Bob, was 12. A year after the widow's death, Sam had twins, Cal and Doug, and is optimistic about the future. Paul also has three children; Lil, age 12, born before the testator's death; Mary, age 8, born during the widow's life; and Nancy, 2 months, born a year after the widow's death. The executors have not yet distributed the estate. How and when would you advise the executors to distribute the estate? Why?

4.

The testator, a widower, died survived by three children and leaving a net estate of approximately \$350,000, which was disposed of as follows:

"5. I will \$100,000 to my trustees in trust to pay the income therefrom to my daughter Della for her life, and at her death to her husband for his life and after his death to distribute the corpus to her then surviving children or surviving issue of deceased children per stirpes.

"6. I will \$100,000 to my trustees in trust to pay the income therefrom to my son Oren for his life and at his death to his widow for her life and after the death of the survivor of them to pay the income to the surviving children as joint tenants for the life of the last surviving child and after the death of such last surviving child to distribute the property to Oren's grandchildren or issue per stirpes then surviving.

"7. The rest and residue of my estate I will to my only other child, Norton, his heirs and assigns."

Della, age 50, and her husband Tom, age 51, have three children. Oren, age 45, and his wife Sarah, age 45, have two sons. Norton, age 40, has just recently married. The executor petitions for an order of distribution setting forth the interests of all concerned. How should the property be distributed? Why?

5.

Able left the residue of his estate in trust to pay the income to Baker for life, remainder as "Baker shall by will appoint to such one or more of his children or other issue as he sees fit and in default of appointment to Baker's children equally in fee." Baker died leaving a will appointing to his son Carl (who was alive at Able's death) for life, one-half the remainder as Carl should by will appoint to his issue or spouse, the other half as Carl should by will appoint, in default to Carl's son, Donald. Carl died leaving a will which gave to his wife, Wendy, (who was alive at Able's death) all of his property including property over which he had a power to appointment. Donald comes to you and tells you that his uncle Eph (short for Ephraim, Baker's only other child) is claiming the trust property. Donald asks your advice as to the interests in the property. How would you advise him? Why?

6.

The testator died seventeen years ago leaving by his residuary clause valuable farm lands to "my beloved wife, Winifred for her life or widowhood and at her decease or remarriage, I devise such farms to the children of my two sons in equal shares and their heirs forever." The testator was survived by his widow and two sons, his only descendants. One son died before the widow without ever having issue. The widow died a short time ago, survived by Albert, a gay but childless bachelor about fifty years old. Albert has tendered your client a favorable offer to sell or lease the premises. Your client has wanted the farm for sometime for his operations and is willing to enter into either transaction but dislikes buying a "pig in a poke". Your client seeks your advice as to what he may do about the offers tendered by Albert. What will you tell him? Why?

FINAL EXAMINATION IN FUTURE INTERESTS (Law 346)

Summer Session 1960

Professor Cribbet

TIME: Three hours and fifteen minutes

Please write legibly, succinctly, and briefly. The major emphasis should be on legal analysis, not on a wordy discussion of irrelevant points.

- I. (40 points) The course in future interests has a variety of objectives. One of these is to develop skill in spotting troublesome language in deeds, wills, trusts, etc. The following limitations are litigation-producers. What is the problem in each instance and what result do you think a present-day Illinois court would reach? Why?
- (1) O devised to A and the heirs male of his body, remainder to B and his heirs.
 - (2) O devised to A for life, remainder to those sons of A who survive him and attain the age of 30. A, who survives O, has three sons, X, Y, and Z. X predeceases O; Y predeceases A; Z survives A but is only 17 at A's death.
 - (3) O devised to A for life, remainder to B for life if B survives A, remainder to B's heirs if B survives A.
 - (4) O conveyed Blackacre to A for life, remainder to B and his heirs so long as the land is used for school purposes, then to "my" (O's) heirs.
 - (5) O devised to A for life, and on A's death to such persons as A shall appoint by will. A appoints by will to his brother B, who predeceases A by two days, survived by one son, X, and a grandson, Y, son of a deceased son of B.
 - (6) O devised certain property to A and gave A a power to appoint certain other property to any person in Henry County except himself (A) or his estate. A exercises the power by deed and appoints to his son B at a time when A is insolvent. Creditors of A try to reach the appointed property.
 - (7) O devised to A, a nephew, and his heirs but if A dies without issue to B for life, remainder to C. A, who is now dead, had two children who died in infancy. B died in the lifetime of A. C was the only son and sole heir at law of O and still survives. A's wife W is also still alive.
 - (8) O devised to A and his children. At the execution of the will, A had a child B who predeceased O. A also predeceased O by a few weeks, but A's wife was then pregnant with a daughter C, subsequently born alive.
 - (9) O devised to A and the children of B. A and B are children of O. At the execution of the will B has five children but at O's death only three survive. One of the deceased children died at the age of five; the other is survived by one child. A dies without issue in the lifetime of O.
 - (10) O devised to A for life, and if A die without children, then to B if B shall survive W (O's wife). A died in the lifetime of O survived by C, a son, and D, a daughter. B and W both survived O and are still alive.

- II. (20 points) Sometimes language is deceptive; it looks clear enough at first reading but contains booby traps which may explode after a testator's death. Explain the problems implicit in the following language, frequently found in wills.
- (11) "To all my grandchildren, now four in number (naming them) and any other grandchildren hereafter born to my two children."
 - (12) A will leaves the residue to W for life, "then to the children of my son, to be paid at their respective ages of 21."
 - (13) "To A for life and then to the children of B when the youngest reaches 25."
 - (14) "To A for life and then to the children of A who reach 21."
 - (15) Deeds too contain pockets of quicksand, e.g., "To my wife for life, then to my children." What are the possible constructions? What do you think the grantor meant? How might he better have accomplished his purpose?
- III. (15 points) Even though the legal document is carefully drafted, it may give rise to unforeseen difficulties. If you were a judge, how would you decide the following cases? Why?
- (16) O gave his son A a life estate in property with power to appoint by will to one or more of O's lineal heirs. A appointed to his brother B, on condition that B pay certain specific debts of A's and pay an annuity to A's widow. B knew nothing about this until A's will was admitted to probate. Result?
 - (17) O's well-drafted will gave A a general power of appointment over 200 shares of A.T.&T. stock, exercisable by will only. A fell on evil days and, while insolvent, covenanted to appoint to X in return for a substantial loan. Shortly before his death, A inherited outright 100 shares of A.T.&T. stock. At his death, A bequeathed "my stock in A.T.&T." to his son B. In the residuary clause of his will, A left "all the rest and residue of my property to my beloved wife, W." What happens to the 200 shares of A.T.&T.? How much help would the following (Virginia) statute provide?

"A devise or bequest shall extend to any real or personal estate, as the case may be, which the testator has power to appoint as he may think proper and to which it would apply if the estate were his own property, and shall operate as an execution of such power, unless a contrary intention shall appear by the will."
 - (18) T devised a tract of land (300 acres) to his grandson A for life "and after his decease to the heirs of his body lawfully begotten, and their heirs and assigns respectively forever, in such manner and shares as the said A may see fit to divide it among them." T's will had a residuary clause leaving the residue of his estate to the X Church. A had two daughters, two sons, and an adopted son. By his will A exercised the power as follows: three acres to one daughter, three acres to another daughter, ninety-four acres to one son, one hundred acres to another son, and one hundred acres to the adopted son. What result?

IV. (25 points) If a testator successfully avoids the traps of archaic language, peculiar constructions, and odd rules from a feudalistic past, he may still stumble over the law's policy against creating perpetuities. Consider the following cases:

- (19) A will left the residue in trust, income to go to T's son for life, then to T's grandchildren, until the youngest attained twenty-one years and nine months, at which time the corpus was to be distributed to living grandchildren; if all grandchildren died under twenty-one, then to the Childrens Hospital. The will also stated: "If any provisions of this will should be void on account of the rule against perpetuities or any other rule of law pertaining to such trusts, then the trusts herein provided shall continue in force for the full period permitted by law and on the day prior to the expiration of such full period, the trustee shall make distribution of any remainder of the trust estate to the persons herein named who would be entitled to take distribution thereon upon termination of the trust." T was survived by a son, S, and a daughter, D. Each child had two children and all four grandchildren were under five years of age. S and D claim the residue as sole heirs at law, alleging the trust to be void. Result?
- (20) The will of Anne Slocome, widow, bequeathed to her son and sole heir, five dollars, declaring he was to have no further role in her estate because of his lack of interest in his mother. Anne then gave the residue of her estate in trust for the children of the son, share and share alike. The trust was to continue until the youngest of the said children living at the time of Anne's death should reach the age of thirty-five or, if the youngest child should die before reaching such age, at the date the child would have reached such age if he had lived. The will further provided: "In the period from my death until the termination of said trust, the income from said trust shall be divided equally among such children as may be living, and paid to them in quarterly installments. Should any such child die during the period of said trust estate, leaving no children, the income shall be divided among the surviving children equally. The child or children of any deceased child shall succeed to the share of the parent, per stirpes and not per capita. When said trust is so terminated, the corpus thereof and any undistributed income shall be divided equally among such children of my son as may then be living, the children of any who may have died to take their parent's share, per stirpes and not per capita."

At the testatrix's death the youngest child of the son was one year old. There were three older children living at that time. How much, if any, of the disposition is valid? Why?

Name _____

No. _____

FINAL EXAMINATION IN INCOME TAXATION (LAW 328)

Second Semester 1958-1959

Professor Stephens

Allowed Time: 3 1/2 Hours

This examination consists of two parts. In Part I there are 30 multiple-choice questions that will be graded on the basis of 2 points of credit for each question answered correctly, without any penalty other than loss of credit for incorrect answers. In Part II there are 4 hypothetical questions that will be scored on the basis of 10 points each. Thus, the examination will be graded on the basis of a maximum of 100 points.

Part I

Do not devote more than one hour to this part until you have completed Part II.

The thirty questions in this part are of the familiar multiple-choice variety. Of the four possible completing statements in each question, mark only one by placing an X on the proper blank. If you feel that a question presents a close choice, select the completing statement that you think can best be defended as accurate in all likely circumstances. Indicate your answers to this part on the examination paper.

1. No federal income tax is likely to be imposed on the salary of:
 - ☐ a. The governor of any of the United States.
 - ☐ b. A member of the Federal Trade Commission.
 - ☐ c. A foreign service officer of the State Department who is abroad uninterrupted for several years.
 - ☐ d. The foreign sales representative of a United States corporation who is out of the country almost all the time for several years.
2. The exclusionary principle upon the basis of which the first question can be answered is found in:
 - ☐ a. An express provision in the United States Constitution.
 - ☐ b. An express provision in a federal statute.
 - ☐ c. A Treasury Regulation adopted under a statutory provision authorizing but not directing such exclusion.
 - ☐ d. A Supreme Court decision resting on broad constitutional principles.
3. An express statutory provision excluding from gross income interest paid on state bonds is traceable at least in part to:
 - ☐ a. Early indication of judicial doubt concerning the scope of the federal taxing power.

- ☐ b. A Congressional desire to treat alike interest paid on state and foreign bonds.
 - ☐ c. A Congressional desire to equalize competition in the sale of state and federal bonds.
 - ☐ d. A reluctance on the part of Congress to tax a common element of the income of widows and orphans.
4. If a taxpayer receives something of value in circumstances not expressly dealt with by the Code, his chance for excluding the item from gross income will be best if he can correctly argue that it:
- ☐ a. Does not represent "wealth available for recurrent consumption, recurrently received."
 - ☐ b. Is "a restoration of capital."
 - ☐ c. Is not "gain derived from capital, from labor, or from both combined."
 - ☐ d. Represents "punitive damages, rather than damages for lost profits."
5. If union benefits paid to striking members can properly be excluded from the members' gross incomes, it must be because:
- ☐ a. The amounts paid are to supply food and lodging, receipt of which is generally exempt from taxation.
 - ☐ b. Such benefits, even when paid only to striking workers, constitute gifts.
 - ☐ c. The Code expressly excludes from gross income amounts received in exchange for an agreement not to do something.
 - ☐ d. Supreme Court decisions interpreting "incomes" as the term is used in the 16th Amendment indicate that Congress lacks power to tax such receipts.
6. In cases of divorce the spouse who pays alimony:
- ☐ a. Can exclude from gross income all amounts he is required to pay periodically under a judicial decree.
 - ☐ b. Is taxed on his entire income without regard to alimony payments.
 - ☐ c. Can claim a deduction for periodic alimony payments, including amounts paid for child support, if the decree specifically requires such support payments.
 - ☐ d. Can claim a deduction for periodic alimony payments, except the part of such payments which the decree fixes as for child support.

7. Although amounts received by a person upon the death of another generally escape income tax, there would not be excluded from gross income an amount:
- ☐ a. Received under the state's laws on interstate succession.
 - ☐ b. Received by one admittedly an heir in settlement of his suit attacking the will.
 - ☐ c. Received by one as an heir after judgment in a will contest suit in which the will was set aside.
 - ☐ d. Received as a result of successful suit to enforce the decedent's contractual agreement to bequeath property to the recipient.
8. The United States Supreme Court has held that gross income does not include amounts received by means of:
- ☐ a. Illegal bootlegging operations.
 - ☐ b. Embezzlement.
 - ☐ c. Unlawful gambling.
 - ☐ d. Extortion.
9. One who receives amounts under an ordinary single-life annuity policy with no refund feature can exclude from gross income:
- ☐ a. All such amounts until the total received equals his cost for the policy.
 - ☐ b. A portion of each amount received until his death, determined with respect to his cost for and his expected return under the policy.
 - ☐ c. A portion of each amount received as indicated in b, above, but only until he has been permitted to exclude his cost.
 - ☐ d. All that he receives each year that is in excess of 3% of his cost until he has excluded an amount equal to his cost for the policy.
10. An individual's discharge of his indebtedness by payment of something less than the full amount is held not to result in income subject to tax:
- ☐ a. If such discharge would be treated as a gift by the creditor to the debtor for gift tax purposes.
 - ☐ b. If the debtor was insolvent both before and after the discharge of the indebtedness.
 - ☐ c. If the indebtedness arose out of the purchase of property from someone other than the creditor.
 - ☐ d. In any case in which the debtor consents to make a downward adjustment in the basis of property owned by him.

11. The income from a trust will be taxed to the settlor, even though payable and paid to private beneficiaries, merely because:
- ☐ a. The corpus of the trust will revert to the settlor twelve years after the creation of the trust.
 - ☐ b. The corpus will revert to the settlor upon the death of the life beneficiary.
 - ☐ c. The trust income can be used to discharge the settlor's obligation to support minor children.
 - ☐ d. Someone with no interest adverse to the settlor can direct the trustee to return the trust corpus to the settlor.
12. Absent special circumstances, an ordinary private trust that is required to distribute all its income currently is:
- ☐ a. Exempt from taxation.
 - ☐ b. Treated in much the same manner as a corporation.
 - ☐ c. Treated in much the same manner as a partnership.
 - ☐ d. Taxed upon all the income it receives without regard to what it must distribute.
13. If an individual makes a gift to charity of property that has a fair market value in excess of his basis for the property:
- ☐ a. He can deduct only the amount of his basis in determining taxable income.
 - ☐ b. He can elect to deduct the fair market value of the property if he consents to be taxed on the difference between that and his basis.
 - ☐ c. He can deduct the fair market value of the property without being taxed on his gain.
 - ☐ d. He would have fared as well or better tax-wise by having sold the property and given the proceeds to charity.
14. Amounts paid for the services of a child of a taxpayer:
- ☐ a. Can eliminate the taxpayer's right to claim a deduction for the child as a dependent.
 - ☐ b. Are taxed to the taxpayer if the child is under 18.
 - ☐ c. Are taxed to the taxpayer if such amounts are treated as his property under local law.
 - ☐ d. Cannot be offset by the child's deduction for personal exemption if the taxpayer claims the child as a dependent.

15. In family partnerships in which capital is a material income producing factor, and in which the partners' income interests are in direct proportion to their capital interests, a donee partner's share of the income:

- ☐ a. Is always taxed to him in full.
- ☐ b. Is taxed to such donee except where established principles apply to tax the entire income to the donee's parent.
- ☐ c. Is taxed to the donee except where services of the donor partner require adjustment of the agreed income interests.
- ☐ d. Is not immediately recognized for tax purposes if the donee is a minor but will later be taxed as an accumulation distribution.

16. A corporation's election of "tax-option" or "pseudo-corporation" status under Code Sections 1371 et seq.:

- ☐ a. Eliminates the corporate tax at the expense of making shareholders directly taxable on the corporate income.
- ☐ b. Relieves such a corporation from the normal tax but not the surtax.
- ☐ c. Makes applicable to such corporation the partnership provisions of the Code.
- ☐ d. Is most likely to be advantageous if the corporation's shareholders are all in a very high tax bracket.

17. The relationship between the "standard deduction" and the concept of "adjusted gross income" is such that:

- ☐ a. Election of the standard deduction forecloses all other deductions that the taxpayer might otherwise claim.
- ☐ b. The standard deduction is in lieu of most deductions for ordinary and necessary business expenses.
- ☐ c. The standard deduction is in lieu of most deductions for otherwise deductible personal expenditures.
- ☐ d. Wage earners who are not making heavy interest payments on personal indebtedness rarely benefit from the standard deduction.

18. A taxpayer probably can claim a tax deduction for:

- ☐ a. The cost of replacing some rotting boards on the floor of the porch of his residence.
- ☐ b. Amounts paid to discharge the debts of his former employer, a bankrupt corporation, if paid to establish his credit standing in business.
- ☐ c. Legal fees incurred in the collection of rent for residential property that he holds for investment.
- ☐ d. The payment of state taxes on property owned by his son.

19. A tax deduction can properly be claimed for the expense of travel:

- ☐ a. From an employee's home to his regular place of work.
- ☐ b. In search of new employment.
- ☐ c. Away from home in pursuit of business, even though in pursuit of business for the taxpayer's employer.
- ☐ d. To the place of a new job secured with a new employer.

20. If a taxpayer proves that he has incurred deductible business expenses but cannot prove the exact amount thereof, he will be allowed to deduct:

- ☐ a. Only such amounts as he can prove were incurred.
- ☐ b. An amount representing a reasonable though perhaps conservative estimate on the known facts.
- ☐ c. The amount claimed less such amounts as the government can prove were not in fact incurred.
- ☐ d. No part of such expenses, disallowance of the provable expenses being the statutory penalty for an excessive or unsupported claim.

21. A taxpayer can treat as a deductible business expense the cost of education:

- ☐ a. To improve skills used in his current employment.
- ☐ b. Necessary to his promotion in his current employment.
- ☐ c. Needed to qualify him for a job with a new employer.
- ☐ d. Essential to his qualifying for a specialty within his chosen profession.

22. No immediate deduction is presently authorized for an individual's expenses incurred in:

- ☐ a. The management of property held for investment.
- ☐ b. A suit to quiet title to investment property.
- ☐ c. The maintenance of property held for the production of income.
- ☐ d. Contesting federal income tax liability.

23. If in the fourth year of a five-year lease, under which the lessee has an option to renew for five years, the lessee places an improvement on the property which has a useful life of ten years, the cost of the improvement will probably be written off as a tax deduction:

- ☐ a. By the lessee over the remainder of the five-year term.
- ☐ b. By the lessee over the term of the lease plus the optional renewal period.
- ☐ c. By the lessee over the ten-year life of the improvement.
- ☐ d. By the lessor rather than the lessee.

24. There is authority supporting a taxpayer's expense deduction (rather than capitalization) for the cost of:
- ☐ a. A substantial wire fence put around a plant for wartime security.
 - ☐ b. Permanently partitioning a general office to provide space for private offices.
 - ☐ c. Lowering a basement floor to adapt a basement to a new business use.
 - ☐ d. Lining basement walls to prevent oil seepage that threatened continued use of the basement of a packing plant.
25. The Code permits the deduction as tax paid (without regard to any possible connection with business) of:
- ☐ a. State assessments against local benefits designed to increase the value of the property assessed.
 - ☐ b. State real property taxes imposed for general revenue purposes.
 - ☐ c. The federal excise on admissions.
 - ☐ d. The federal income tax.
26. If a taxpayer purchases improved property adjacent to his business property and, as initially planned, razes the building on the newly acquired property, replacing it with an addition to his business buildings, he can:
- ☐ a. Take a loss deduction for the part of the purchase price attributable to the razed building.
 - ☐ b. Treat the part of the purchase price attributable to the razed building as a part of the cost of the new building for depreciation purposes.
 - ☐ c. Amortize the part of the purchase price attributable to the razed building over the period it would have been useful if not razed.
 - ☐ d. Treat the part of the purchase price attributable to the razed building only as a part of the cost of the land.
27. If a taxpayer bought a personal pleasure car for \$3,000, used it two years with a shrinkage in actual value to \$1,500, and it was then completely destroyed (no salvage) in a collision for which he received no insurance or other compensation, his loss would be:
- ☐ a. A non-deductible personal loss.
 - ☐ b. Deductible in the amount of \$3,000.
 - ☐ c. Deductible in the amount of \$1,500.
 - ☐ d. Deductible in an amount equal to \$3,000 less the amount of straight line depreciation that would have been allowed if the car had been used in business.

28. If a taxpayer made a loan to a friend to aid the friend in meeting a personal need and the friend's obligation became worthless, the taxpayer should:

- ☐ a. Treat the loss the same as a casualty loss.
- ☐ b. Treat the loss as a short term capital loss.
- ☐ c. Treat the loss as a long term capital loss.
- ☐ d. Claim no deduction for the year of worthlessness but charge the loss against the reserve usually set up to take into account such losses.

29. A cash method-calendar year individual would not include in gross income for 1958:

- ☐ a. Salary credited to his account by his employer, which he could have withdrawn in 1958 but did not withdraw until 1959.
- ☐ b. Interest credited on savings bank deposits in 1958 but not withdrawn that year.
- ☐ c. Interest coupons on bonds, which matured in 1958, but which coupons were not clipped because the individual was physically unable to go to the bank.
- ☐ d. A salary check mailed in accordance with regular practice on December 31, 1958, but not received until January 2, 1959.

30. If a cash method lessee of business property pays \$5,000 cash as rent for a five-year leasehold upon execution of the lease:

- ☐ a. The \$5,000 is income to the lessor and deductible by the lessee in the year the lease is executed.
- ☐ b. The \$5,000 is income to the lessor in the year the lease is executed but deductible by the lessee in part in subsequent years.
- ☐ c. The \$5,000 is income to the lessor in the year the lease is executed only if the lessor is on the cash method but without regard to the lessee's accounting method.
- ☐ d. The \$5,000 is income to the lessor only in part in the year of execution if the lessor is on the accrual method.

FINAL EXAMINATION IN INCOME TAXATION (LAW 328)

Second Semester 1958-1959

Professor Stephens

Part II

1. Assume that the taxpayer is single and that without regard to transactions discussed in this question he has taxable income for the year 1958 in excess of \$50,000. In that year he sold the following items of property:

	<u>Adjusted basis</u>	<u>Sales Price</u>
a. His personal residence	\$35,000	\$30,000
b. A truck used in his contracting business	800	2,000
c. A milling machine used in his contracting business	500	300
d. Unimproved realty held for investment	1,000	4,000

Each item sold had been owned by the taxpayer for more than one year.

In addition, the taxpayer had purchased 100 shares of Builders' Supplies, Inc., in 1955 for a total cost of \$3,000. In 1958 the corporation went into bankruptcy and its assets failed to discharge fully its obligations to its creditors.

Making (and stating) any further assumptions you deem necessary, indicate how these circumstances will affect the taxpayer's income tax liability for 1958. Whether or not you show a computation (which you need not do), explain fully your conclusions.

2. X owns 1000 acres of farm land which he purchased for \$20,000 subject to a mortgage of \$5,000 (still outstanding) which he did not assume. The property is potentially good farm land but needs much work done on it before it can be operated profitably. Y has cash that he is willing to put into a farming venture with X. They agree that X's land has a market value of \$35,000. Upon deciding to form the Farm Corporation, the following exchanges take place:

- a. Y receives 100 shares of stock in the newly formed corporation for \$25,000 cash.
- b. X contributes his property, subject to the mortgage, and receives from the corporation:
 - (1) 100 shares of its stock,
 - (2) and \$5,000 cash.

It may be assumed that the stock received by each shareholder is worth \$25,000 when issued.

What is X's "realized" gain, if any, on the exchange? To what extent, if at all, is his gain "recognized"? What is X's basis for his 100 shares of stock? Explain.

3. The taxpayer owns a residence in which he has lived for several years. He acquired it by devise from his father in 1954 when it had a value of \$26,000, even though his father had purchased it for \$20,000 several years earlier. A would-be buyer has offered \$30,000 for the house, which he is willing to pay in equal \$5,000 amounts, giving notes secured by a mortgage for the deferred payments. The taxpayer is tempted by the offer but completely uninformed as to the possible tax consequences of its acceptance and quite undecided whether or where or when he may acquire a new residence if he sells his present one. Fill him in on the possible tax consequences fully but succinctly.

4. T's father gave him 100 shares of X Corporation stock on June 1, 1956. At that time the shares were worth \$10,000 but T's father had paid \$12,000 for the stock when he purchased it in 1954. In 1958, T sold the same 100 shares to his wife for \$8,000. Late in 1959 T's wife contemplates a sale of the stock. Indicate what the tax consequences will be upon her sale if she sells the stock: (a) for \$6,000 and (b) for \$12,000. Fully explain your answer.

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FINAL EXAMINATION IN INCOME TAXATION (Law 328)

Second Semester 1959-1960

Professor Young

ALLOWED TIME: 3 HOURS

INSTRUCTIONS

- (1) Begin writing on the second page of the examination booklet. Start each question at the top of a new page.
- (2) Organize your answers carefully. State fully your reasons. Budget your time.
- (3) Adhere to the indicated space limitations. Each side of a page in the examination book is treated as one page. These are maximum limitations. Quality, not quantity, is preferred.
- (4) Students may have the CCH pamphlet copy of the Internal Revenue Code with them.

I. (20%) (a) T, a distinguished university professor of physics, wrote a letter to the editor of the student newspaper, which was published on the editorial page on 15 November 1959. In the letter, T advocated appeasement of Soviet Russia by surrender of West Berlin, publication of all our atomic and other defense secrets, admission of Red China to the United Nations, and withdrawal of United States support of Formosa. As a consequence of the letter, a number of persons charged that T was a communist. This led to a hearing by the board of regents of the university to determine whether T should be continued in his position. T retained an attorney to represent him at the hearing. To finance the expenses involved, T borrowed \$1,500 at the local bank on 1 December 1959 upon the security of his promissory note due 1 March 1960. These funds were immediately paid over to his attorney. The hearing was held during the last week of December 1959, and on 15 January 1960, the board of regents ruled that T should be retained on the faculty of the university. On 1 February 1960, T paid his attorney an additional \$1,000 for his services. On 1 March 1960, T paid the note which fell due at the bank.

(b) Immediately following the hearing by the board of regents, T filed suit for damages against certain individuals based on allegations of libel. This suit was settled on 1 April 1960. T received \$10,000 in the settlement, of which \$2,000 was paid to his attorney for legal services.

T reports his income on a cash and calendar year basis. He requests your advice as to the proper treatment of these transactions for income tax purposes. Discuss. (3 pages)

II. (20%) In 1958, A, an architect, entered into a contract with M Corporation to prepare certain preliminary designs for new buildings which would be required for plant expansion. Under the terms of the contract, A was to receive a fee of \$10,000 for his services. A completed the work as of 1 September 1958. Upon completion of his services, the president of M Corporation, pursuant to authorization by the board of directors, offered A an 18-month assignable option to purchase 100 shares of treasury common stock (par value \$100) at a price of \$100 per share. The option was offered in lieu of the \$10,000 fee, although the Corporation indicated its willingness to pay in cash if A preferred.

As of 1 September 1958, the M Corporation stock was selling at \$200 per share. This was the price at which the M Corporation stock had stabilized for a period of about a year prior to 1 September 1958. A agreed to accept the option which was granted as of 1 September 1958 and extended to 1 March 1960. Shortly after the execution of the option, the price of M Corporation stock began to decline.

By 1 July 1959, the M stock had declined to \$150 per share. On that date, A assigned his option to B, an attorney, in payment for legal services which had been rendered in connection with A's business operations and which had been billed in the amount of \$5,000. B held the option expecting the price of the M stock to recover. However, the price continued to drop and by 1 March 1960, the M stock was selling at \$90. B permitted the option to expire on that date.

Discuss the tax consequences of these transactions: (a) to A (2 pages); (b) to B (1 page); (c) to M Corporation (1 page). A and B report their income on a cash and calendar year basis; M Corporation, on an accrual and calendar year basis.

III. (10%) In Rev. Rul. 60-158, published 25 April 1960 in 1960-17 Internal Revenue Bulletin, the Internal Revenue Service announced that "fees paid to an employment agency" in obtaining employment are not deductible expenses. In issuing this ruling, the Service revoked an old ruling, O.D. 579 (Office Decision), 3 Cum. Bull. 130 (1920) in which it was held that "fees paid to secure employment are considered allowable deductions." On 20 May 1960, the Internal Revenue Service announced that Rev. Rul. 60-158 "is revoked" and that "the Service will continue to allow deductions for fees paid to employment agencies for securing employment." What is your appraisal of this action of the Internal Revenue Service and the implications thereof? Discuss fully. (2 pages)

IV. (20%) On 1 July 1958, T Corporation employed A as vice president in charge of production at a salary of \$5,000 per month, payable semi-monthly, for a term of five years ending 30 June 1963. Early in 1960 it became apparent that A's services were unsatisfactory. On 1 March 1960, the board of directors gave A notice that his employment would be terminated as of 1 June 1960. A immediately threatened to bring suit for damages for breach of contract. After considerable negotiation, a settlement agreement was executed by the parties which provided for the following payments to A:

- \$3,000 per month, June 1960 through December 1960
- \$2,000 per month, 1961
- \$1,500 per month, 1962
- \$1,000 per month, 1963
- \$1,000 per month, 1964

Your firm serves as legal counsel for T Corporation. The Corporation reports its income on a calendar year basis and by the accrual method. You have been requested to advise the corporation as to the proper tax treatment of this transaction. What do you advise? Discuss fully. (3 pages)

V. (20%) H and W were divorced 2 January 1959. Pursuant to an agreement incorporated in the decree of divorce, H was required to convey to W the fee interest in the residence which had been occupied by them as their home. The home had been purchased in 1945 at a total cost of \$60,000 including a mortgage of \$40,000. Title to the property was taken subject to the mortgage. At the date of the divorce, the balance due upon the principal of the mortgage was \$24,000, which was payable in annual installments of \$2,000 over a 12-year period, with interest at five per cent per annum on the unpaid balance. The property was valued on 2 January 1959 at \$120,000. The agreement provided that W would accept H's equity in the property in full satisfaction of her dower and other property rights in H's estate. The decree also provided that, in addition to alimony of \$200 per month, H should pay the principal and interest upon the mortgage and the local property taxes upon the home. During the year 1959, H made the following payments: \$2,000 upon the principal of the mortgage; mortgage interest of \$1,200; and real property taxes of \$1,800.

H, who regularly prepares his own tax return, claimed a deduction in his 1959 return for the monthly alimony payments of \$200. It has subsequently occurred to him that the other transactions relating to his divorce should have been included in his 1959 return. He consults with you. What do you advise? Discuss.
(3 pages)

VI. (10%) On 17 May 1960, the Fifth Circuit, in a divided opinion, held that a Louisiana state supreme court justice could deduct as traveling expenses the rent paid for an apartment in New Orleans which he and his wife occupied while the court was in annual session in that city. The taxpayer's family home was 75 miles distant. State law required two years' residence in the judicial district from which a justice was elected as a prerequisite to eligibility, and required continued residence therein during the term of his office. The taxpayer received a salary as full compensation for his services without reimbursement for traveling expenses, meals and lodging. No deduction was claimed by the taxpayer for transportation or meals.

It is likely that the government will apply for certiorari in this case. Discuss the prospects upon review by the Supreme Court in the light of the Peurifoy decision and any other relevant factors. (Mimeographed copies of the Peurifoy decision are included with the examination materials.) (2 pages)

FINAL EXAMINATION IN INSURANCE (IAW 338)

First Semester 1958-1959

Professor Davis

TIME ALLOWED: THREE HOURS

Instructions: A sample Multiple Automobile Policy is distributed with the examination questions. To the extent of all relevant provisions (disregarding car description, names, dates, places, and figures inserted in the sample), assume that the various policies involved in Questions 3 and 4 are in the form of the sample policy, except as otherwise stated.

1. X's accident insurance policy, payable to his estate, covered death "resulting from bodily injury, sustained and effected directly through external, violent, and accidental means." X was in the American army in Korea, and after the cessation of hostilities was shot and killed in a fight with another American soldier. A clause excluded death occurring "while the insured is enrolled in the military service in time of war." The insurer refuses to pay. X's executor can prove, if the evidence is admissible, that X took out the policy during the Korean conflict, after he had joined the army and had been assigned to overseas duty, that the soliciting insurance agent knew these facts when he took the initial premium, and that the insurer received and cashed a remittance for the second annual premium which on its face made it clear that X was in military service in Korea. Advise the executor whether to sue the insurer or to forget it, and write a supporting memorandum.

2. The Y Fire Insurance Company issued to A a \$50,000 policy of fire insurance covering the fluctuating stock of goods in A's furniture store. A standard mortgage clause made the policy payable to B "as his interest may appear." B held a mortgage on the fluctuating stock in the store to secure present and future advances to A. At the time of the fire described below, A owed B \$10,000. The policy insured against all "direct loss by fire, while the books and inventories of the insured are kept in a fireproof safe or locked fireproof file cabinet, and not otherwise," and also contained the following clause: "It is warranted by the insured that he will take a complete itemized inventory of the stock on hand at least once in each calendar year, and that he will maintain a set of books presenting a complete record of business transacted, and will keep such books and the last two such inventories in some place not exposed to fire which would destroy the building. Any failure by the insured to comply with the terms of this clause will render the policy void." The insured had a fireproof safe in the store and habitually used it. But one Saturday night he was working on the books until after midnight and expected to return about 6 a.m. on Sunday to continue the work. Not wishing to disturb his work, he left the books spread out on his desk. In fact he was too tired to return on Sunday morning, and the books were left out for the week-end. On Sunday night a fire in the store, of unknown origin, destroyed \$15,000 worth of the furniture. The value of the remaining stock substantially exceeds the amount of the debt owed to B. The books were not touched by the fire, and from them the status of the stock was accurately reconstructed. The insurer disclaims liability, and A sues. C intervenes, claiming as B's assignee for value of the debt, of the mortgage, and of the insurance. No notice of the assignment was given to A or the insurer. Decide the case.

3. J and his son S jointly owned a car that was described in a liability policy issued by L insurance company, both J and S being named as insureds. While this car was undergoing repairs, Mrs. J lent her car (insured against legal liability, with Mrs. J as named insured, by A insurance company) to S, who gave permission to T to drive it. T's own car was out of gasoline at the time. While driving Mrs. J's car, within the scope of S's permission, T tortiously caused personal injuries to P in a head-on collision with P's car. At this time T was named insured in a liability policy on his own car (not involved in the accident) issued by M insurance company. The personal injury liability coverage of each of the policies mentioned herein was limited to a liability of \$20,000 to each injured person. P obtained a judgment against T for \$25,000 on account of personal injuries. As soon as it became final, P sued insurers L, A, and M. What decision? Do not consider the facts stated in Question 4.

4. Assume the same facts and parties are those described in Question 3. Mrs. J's car was also insured by A insurance company against accidental loss or damage by collision or upset. X held a chattel mortgage on the car, and was named in the policy as payee in an open loss-payable clause. In the "Declarations" of the policy it was stated, "The automobile will be principally garaged in Champaign, Illinois." When the policy was issued and for six months thereafter, Mrs. J lived in Champaign and kept her car there most of the time. Three weeks before the accident, however, Mrs. J and her family moved to Chicago to live, and the accident occurred there. Insurer A paid to X the amount of the collision damage to Mrs. J's car. Insurer A then sued Mrs. J, T, and insurers L and M. What decision?

End of Examination

TIME ALLOWED: THREE HOURS

1. Jake's declarations to an agent of Insurer X in obtaining an automobile liability insurance policy contained the following questions and answers:

- Q: Did any company ever decline to write automobile liability insurance for you?
A: No.
Q: Do you have defective eyesight or hearing?
A: No.

In fact several companies had declined to write insurance for Jake because of his defective vision and hearing. Prior to this application, however, both had been adequately corrected, by glasses and a hearing aid. No question on the form elicited information about convictions, but Jake had been convicted three times of drunken driving. On the last such occasion his driver's license had been revoked for a year. Since a judgment for damages, still unpaid, had also been rendered against him on that occasion, the financial responsibility act of the state required liability insurance before Jake might regain his license. Insurer X issued the policy applied for and certified issuance to the motor vehicle division without inquiring why the act applied to Jake. Subsequently Jake negligently injured Hortense by speeding while sober, and Insurer X disclaimed any duties under the policy. Hortense reduced her claim to a judgment against Jake, and now sues on the policy. Decide the case and state your reasons, both under common-law principles and in the light of any commonly enacted statutes affecting the problem.

2. A policy insuring the XYZ Manufacturing Company against payroll robbery contained the following clause:

It is agreed that one armed guard with no other duties will be on duty within the premises at all times when money, intended for the payroll of the Insured, is exposed to robbery loss. Otherwise this policy shall be null and void.

A relevant state statute reads as follows:

No breach of warranty or condition shall avoid an insurance contract or defeat recovery thereunder unless such breach materially increased the risk of loss, damage or injury within the coverage of the contract.

In an action on the policy the insured proved that payroll money had been delivered to its accounting and disbursing office, which was in a small building separate from the rest of the plant, at about one o'clock in the afternoon. The money had been placed and locked in a 600-pound safe. No armed guard was present at any time that day. A few minutes later armed robbers threw more than a dozen hand grenades through the doors and windows of the building and killed all the personnel within. The robbers then took the safe with the payroll money locked inside and escaped. What decision?

3. The Preferred Life Insurance Company has its home office in Hartford, Connecticut. It maintains an agency in Albuquerque, New Mexico. On November 5, 1959, Paul Praline applied to the Albuquerque agency for a \$20,000 policy on his life payable to Ann Oxia as beneficiary and requested that the right to change the beneficiary be not reserved. Praline paid \$735 and was given the following receipt:

November 5, 1959

An application for a \$20,000 policy having been made by Paul Praline, there has been collected from him \$735 to be considered the first annual premium on said policy provided the application is approved by the Company at its home office, and in that event the insurance as applied for will be in force from this date. If the application is not approved, the sum collected will be returned.

Preferred Life Insurance Co.
By Fred Facile, Agent

The application papers reached the Company's home office on November 8. On November 9 the home office received a telegram from Praline withdrawing his application and demanding that the premium be returned. On November 10 the home office approved Praline's application, mailed the policy applied for to its agency at Albuquerque with instructions to deliver it to Praline, and wrote Praline directly saying that it could not return the premium "which our representative in Albuquerque accepted from you in good faith." On November 11 Praline was killed in an automobile accident. On November 12 the policy reached Albuquerque. At all material times Praline and Ann Oxia were engaged to be married; but the New Mexico statutes provided that "all civil causes of action for breach of promise to marry are hereby abolished."

Ann Oxia sues Preferred for \$20,000. The administrator of Praline's estate sues Preferred in two counts, one for \$20,000 and another for \$735. The suits are consolidated. What decision?

4. In 1941 P took out a 20-year term fire policy in the face amount of \$20,000 with the Z Insurance Company on a residence situated in Illinois and owned in joint tenancy by P and his brother. The policy was written in the 1918 New York standard form, and named P only as the insured. P paid the premium in advance for the full term. P's brother died a week after issuance of the policy. In 1946 P took out another 20-year term fire policy, also for \$20,000, on the same house with the X Company. The full premium was paid in advance. This was a 1943 New York standard policy. Both policies contained the following provision:

This Company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance, whether collectible or not, covering the property at the time of loss.

In 1959 P offered to sell the insured house to a prospective buyer for \$40,000. The next day, before the prospect could act on the offer, the house burned to the ground. The prospective buyer is willing to testify, however, that he had made up his mind to accept P's offer before learning of the fire. What are P's rights against the Z Company and the X Company?

FINAL EXAMINATION IN INTERNATIONAL LAW (Law 348)

Second Semester 1958-1959

Professor Carlston

IMPORTANT: You will find a number in the upper right-hand corner of this page. This will be your examination number. Your grading will be made without knowledge of your name. A list of the members of the class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination book.

You will have 3 1/2 hours for answering this examination. Always state reasons for your answers.

25 points 1. A revolutionary group of about 100 armed men land on the coast of Panama. They had obtained their arms and vessel in Cuba and had sailed from a Cuban port. Panamanian natives join in their movement. The Panamanian army refuses to fire upon citizens and the government is overthrown. A government named the Peoples Republic of Panama is then established and shows itself to be composed of Communists. The new government declares the canal regime to be at an end and the treaty with the United States establishing that regime to be terminated pursuant to the principle of rebus sic stantibus.

(a) The United States, affirming its intention to maintain its rights under international law by force, if need be, lands forces in Panama, and swiftly establishes its military power throughout the state. It then conducts elections by secret ballot and a new government is elected and placed in office. The United States recognizes this government and advises it that the United States will be available whenever it might call upon the United States to assist it in maintaining its sovereignty.

(b) The Organization of American States holds a meeting in which a resolution is passed condemning Cuba for supporting attempts to overthrow other American states by force or revolution as action in contravention of international law.

Discuss the extent to which the actions of the United States and the Organization of American States in (a) and (b), respectively, are well founded in international law.

15 points 2. What evidences of international law occur to you to support your conclusions in 1 (a) above, and to what degree are they entitled to weight in supporting your conclusions?

25 points 3. A United States military plane, based in Denmark under NATO, while engaged in reconnaissance is shot down by a Soviet military plane at a point 8 miles off the Russian coast in the Baltic Sea. The plane crashes into the sea. Its crew are picked up by a Danish fishing vessel then drifting towards shore as a result of engine failure which occurred at a point 16 miles from shore. The vessel was 7 miles from land when it rescued the crew of the plane. The fishing vessel had at no time been within 12 miles of the Russian shores until after its engine broke down. A few minutes after the plane's crew were picked up, a Soviet government vessel seizes the Danish vessel and all persons on board, Danes as well as Americans, are arrested. All are held in Russia for trial on charges of espionage. Neither American nor Danish protests result in their release.

The dispute is placed on the agenda of the United Nations General Assembly. The Soviet representative, in the debate, charges that the actions of the United States and Denmark cannot be justified by the NATO treaty and that such treaty is itself illegal, that Soviet territory was illegally invaded by the American plane, and that the entry of the Danish vessel into Soviet water was also illegal.

For your information, the Soviet supports the principle that its territorial waters extend 12 miles from its coast.

To what extent does Soviet action involve a violation of the rights of the United States and Denmark under international law? Discuss, among other things, the validity of the points raised by the Soviet representative. Carefully consider your answer to be sure that you have covered all the issues raised by the above facts.

15 points 4. The Charter of the Nuremberg trial has been ratified by some 26 states. It has also been approved by the Assembly of the United Nations. Is it law as to non-ratifying states which are members of the United Nations? As to non-ratifying states which are not members of the United Nations?

20 points 5. The Dickson Company, an American corporation, sold and delivered in 1913 car wheels of the value of \$4,000 to the National Railways of Mexico, a Mexican corporation, a majority of the stock of which was owned by the Mexican government. In 1914 the Mexican government, then unrecognized by the United States, by decree took possession of the National Railways. The government thereafter operated the Railways directly, through a governmental agency known as the "National Railways of Mexico, Government Administration," until 1923, when they were returned to private operation, namely, to the said National Railways of Mexico. In 1915 the then Mexican government was recognized by the United States. In 1923 a treaty was reached between the United States and Mexico establishing a tribunal for the settlement of then pending claims between the two states.

Assume that in 1926 the Dickson Company consults you as to the recovery of its \$4,000 debt. It advises you that it has from time to time presented its bill for \$4,000 to the National Railways of Mexico, that on each such occasion the latter corporation has acknowledged the debt in writing, thereby keeping it alive under the statute of limitations, but it has always replied that, owing to the seizure of its property by the government of Mexico from 1914-1926, it received no revenues therefrom and is unable to meet its obligations.

The National Railways of Mexico has an agency in New York. The Mexican National Railways, Government Administration, has a representative in New York and also a substantial balance in its name in a New York bank.

Discuss whether (a) you should institute any legal proceedings in New York; if so, against whom and your likelihood of success therein; (b) whether you should lodge a claim with the State Department and/or with the claims tribunal established under the treaty of 1923; and (c) the validity of any international claim your client may have.

FINAL EXAMINATION IN INTERNATIONAL LAW (Law 348)

Second Semester 1959-1960

Professor Looper

Instructions: There are five questions on this examination. It is suggested that you spend about 40 minutes each on the first four questions, and about 30 minutes on the last question.

1. In 1950 the United States and Canada negotiated a treaty regulating the uses of the waters of the Niagara River, particularly for power purposes. Article VI of this treaty, for example, provided that, "The waters made available for power purposes by the provisions of this Treaty shall be divided equally between the United States of America and Canada." But the treaty did not deal with the question how each nation was to exploit its share of the water.

The Senate Foreign Relations Committee recommended that the Senate advise and consent to the ratification of the treaty, subject to the following reservation:

"The United States on its part expressly reserves the right to provide by Act of Congress for redevelopment, for the public use and benefit, of the United States' share of the Niagara River made available by the provisions of the Treaty, and no project for redevelopment of the United States' share of such waters shall be undertaken until it is specifically authorized by Act of Congress."

The Senate unanimously gave its consent to the ratification of the treaty subject to this reservation. The President ratified the treaty subject to the reservation and communicated the existence of the reservation to the Canadian Government. The Canadian Government, in its ratification, accepted the reservation.

But for the reservation, the Federal Power Act of 1920 would apply and the Federal Power Commission could under this Act consider proposals and issue licenses for diversion and redevelopment. In 1956 the Power Authority of the State of New York (a state agency) applied to the Federal Power Commission for a license to construct a power project to utilize all of the Niagara River water which, under the 1950 treaty, is available for American exploitation. The Commission dismissed the Power Authority's application, declaring

"In the absence of the treaty reservation we would act on the Power Authority's application in accordance with the provisions of the Federal Power Act of 1920. But if we are to accept the injunction of the reservation as it stands, we would have no authority to consider the application of the Power Authority on its merits. . . . We are without authority to issue a license for the redevelopment."

The Power Authority brought a proceeding in the U. S. Court of Appeals for the District of Columbia to review the Commission's dismissal order. How should the case be decided?

/Cf. Power Authority of State of New York v. Federal Power Commission,
247 F. 2d 538 (1957)/

2. Before World War II a man named Ahmedoglu made a deposit in your city in the First National Bank, which is a regular commercial bank with its deposits insured by the U.S. Federal Deposit Insurance Corporation. Ahmedoglu was a citizen of Albania, which was then a monarchy. Early in 1945 a communist regime took control of Albania and ousted the King. The United States Government has consistently refused to give formal diplomatic recognition to the communist regime, although the ex-King is not looked upon as the ruler and a negotiating mission was sent to Albania for several months in 1945.

In 1948 the communist Albanian government issued an order nationalizing all property of certain classes of persons, including their property located outside Albania. Ahmedoglu was included in the group. The bank has not heard from him since the beginning of the war, but it has no reason to believe that he is dead. This week a citizen of the United States appeared at the bank and exhibited documents purporting to have been duly executed by officials of the Ministry of Finance of the present communist government of Albania. These documents authorize the bearer to withdraw the funds originally deposited by Ahmedoglu and subsequently expropriated. The bank calls you in as their lawyer to examine the documents and advise whether the funds may safely be paid to the bearer. The bank officials point out that Albania was admitted to the United Nations in 1955, with the concurrence of the United States.

Draft a memorandum advising the bank whether and on what conditions it should pay the funds to the bearer of the Albanian government documents, with your reasons.

3. An airplane owned and operated by a privately owned corporation organized under the laws of Mexico by Mexican citizens, and bearing the Mexican flag, was registered as a Mexican flag aircraft. While the plane was in the air over the water about halfway between the mainland coast of California and Santa Catalina Island, a disturbance occurred on the plane, resulting in the killing of one of the passengers (a Puerto Rican) by another. The pilot in charge of the plane, fearing more trouble, quickly headed for the nearest airport, which happened to be in Long Beach, California. He radioed ahead, and municipal police officers were on hand to meet the plane. They removed the man who had done the killing and took him to the local jail. He kept shouting through the bars, "You can't do this to me! I'm an American citizen!"

What arguments would you make on his behalf in a habeas corpus proceeding? What arguments would you make as prosecuting attorney in opposing the habeas corpus proceeding?

Santa Catalina Island is about twenty miles from the California mainland.

4. In 1942 Hans Bankb rger was living in Germany, his native country. He owned a considerable amount of property in the United States, and all of it was seized in that year by the U.S. Office of Alien Property in the exercise of powers granted in the Trading with the Enemy Act. In 1946 Bankb rger left Germany and took up permanent residence in Brazil, where he duly became a citizen.

Beginning in 1945 Bankb rger tried to get possession of the property in the United States. He wrote several letters to the Office of Alien Property, requesting that they release the property, and even visited the United States once to try to convince them to let him have it. They refused persistently and merely suggested to him that he bring suit to test his rights. Finally in 1960 Brazil instituted a suit in the International Court of Justice against the United States, demanding the property claimed by Bankb rger, alleging that retention of the private property of any individual under such circumstances is a violation of international law.

If you were an attorney in the Office of Alien Property in the Department of Justice and were asked by your boss to prepare a memorandum in the next forty minutes, to be used in response to the State Department's request for the Justice Department's views as to the procedural and substantive defenses available to the United States, what would you write?

5. Write short notes on the following: (a) the jurisdiction of the Nuremberg Tribunal; (b) jurisdiction over the continental shelf; (c) the status of Antarctica in international law.

TOTAL TIME: 2 hours. Please allow 30 minutes to each question.

I. Rudy Dixon left the key in the ignition and the engine of his 1959 Chevrolet running while he hurried into the Hughes Dry Cleaning establishment in Urbana, Illinois, to pick up a suit of clothes. He was not in the establishment more than four minutes. While he was inside Jacob Whipple, with the purpose and intent of stealing Dixon's car, drove it off at high speed. Two blocks from the cleaning establishment, while traveling 55 miles per hour in a 35-mile speed zone, Whipple rammed the rear end of an automobile driven by Ruth Drummond, which had slowed at a pedestrian crossing. Ruth Drummond died immediately as a result of injuries received in the collision.

Illinois has a statute which provides, in part:

"No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition and removing the key, . . .

"Every person convicted. . . for a violation of any of the provisions of this Act . . . shall . . . be punished by a fine of not less than \$1.00 nor more than \$100.00; . . ."

Rudy Dixon was indicted in Champaign County, Illinois, for manslaughter. At his trial before a jury the evidence revealed the facts given above. The jury found him guilty as charged, and he was sentenced to the penitentiary for a term of 1 to 3 years (the penalty for manslaughter in Illinois may be not less than 1 nor more than 14 years). On appeal from his conviction, what result? Why?

II. On Saturday morning Mrs. A went shopping at the X Department Store. Among other things, she purchased three expensive imported linen handkerchiefs, which were neatly packaged in a cellophane bag. After returning home she decided that she preferred another gift for the person she had in mind and, therefore, decided to have her husband return the handkerchiefs the following Monday. Accordingly, on Monday morning Mr. A went to X store. Since the handkerchiefs had been wrapped with the other things and since they remained in the cellophane bag, he simply put the bag in his coat pocket.

On arriving at X store Mr. A approached the handkerchief counter and pulled the cellophane bag out of his pocket. It happened that the store was unusually busy at the moment and he waited for fifteen minutes without attracting a clerk, whereupon he decided to return at another time. He was just putting the cellophane bag back into his pocket when a floorwalker saw him and approached. The floorwalker politely asked Mr. A to see the saleslip on the handkerchiefs. Mr. A produced the slip which his wife had given him, but it turned out to be the wrong one, the proper one having been left at home. The floorwalker then asked Mr. A to step into the office with him. Mr. A was embarrassed by this turn of events, and he hotly resented the implication that he had stolen the handkerchiefs. He insisted that there was no reason for going to the office. By this time a crowd had gathered around them. The floorwalker took Mr. A firmly by the arm and led him into the office. Mr. A did not resist. Mr. A was kept in the office for one hour while the store records were searched. During this time he was allowed to call his wife. She became extremely upset by the incident. After one hour the store located its record of the sale, apologized profusely to Mr. A for detaining him, and told him that he was free to leave.

Mr. A was deeply humiliated by this experience, and Mrs. A alleges that she has never been able to step into the X store again without feeling that both she and her husband are regarded as thieves. She has become very morose over this, and alleges that she now shuns even her friends because they too may feel that she is dishonest.

Based on common-law principles, what rights, if any, does Mr. A have against X store? Explain and indicate what you believe the results would be.

Assuming this series of events took place in Illinois, would the result be affected by any statutes, and if so, how?

III. Farmer Fleece ran the following classified ad in the Champaign News-Gazette:

Will absolutely sell at auction my pair of prize two-year-old mules, Kelly and Nellie. Sale to be held at Cornbog Estate, Monticello, on March 10, 1960, at high noon. Minimum bid \$250.
F. Fleece.

Recondite McDrivel, a retired law professor and would-be farmer, read the ad and appeared at Cornbog Estate at noon on March 10. He could find no one, man or mule. Returning home, he promptly wrote Fleece this letter:

I will buy Kelly and Nellie for \$250 cash, and will pick them up at your place the afternoon of March 15, 1960. I plan to raise several species of livestock, including mules. Kelly and Nellie sound like the starting breeders I need.

/s/ R. McDrivel

Fleece wrote back on March 11: "Accept your offer of March 10. I'll be looking for you next Tuesday. For breeding, you will need a jackass, but I believe you already have one." Fleece refused to complete the sale on March 15. McDrivel immediately threatened suit for breach of contract, and Fleece now consults you regarding his legal rights and duties in the matter. You make inquiries on the local mule market and learn that mules like Kelly and Nellie are sold every day for \$275 or more. Write a memorandum of your advice to Fleece.

IV. A statute of the State of Illinois reads:

"1. No bank, trust company, national bank, individual, partnership, unincorporated association or corporation other than a savings bank or a savings and loan association shall make use of the word 'saving' or 'savings' or their equivalent in its banking or financial business, or use any advertisement containing the word 'saving' or 'savings', or their equivalent in its banking or financial business, nor shall any individual or corporation other than a savings bank in any way solicit or receive deposits as a savings bank.

"2. No bank, trust company, national bank, individual, partnership, unincorporated association or corporation shall offer a safe deposit service unless it shall first have applied for and received a permit from the State Banking Commission.

"3. Any violation of the above sections of this Act may be enjoined and any person or corporation found guilty of a violation of this Act shall be fined not less than \$100 or more than \$1,000 and be imprisoned for not more than one year in the county jail."

The Brightville National Bank, chartered by the Federal Government, advertises as a "Savings Bank" and offers a safety deposit service without a permit. The bank sues to enjoin the enforcement of the Act. What result? Why?

NAME _____

NO. _____

MIDSEMESTER EXAMINATION IN JUDICIAL REMEDIES (Law 305)
November 10, 1958 Professor Stone

TIME: Fifty Minutes

PART I

INSTRUCTIONS

If you think that any further facts have to be assumed, assume them and say what they are. If you think that ambiguities exist, point them out, and resolve them in some stated way, or deal with the question on the basis of alternative resolutions.

Please do not write anything except your name and section on the cover page of the examination book.

James and Wilson are citizens of the State of the Everlasting Common Law. Last July 4 Wilson asked James if he could borrow the James car so that he could drive his family to the local Independence Day celebration. James consented. Wilson used the car to drive his family to the celebration site. There they met the Benton family, who invited the Wilsons to stop by for refreshments after the celebration. The Wilsons drove to the Benton home, which was several miles out of town, and, after a brief visit, re-entered the James car and started to drive home. On the way, a torpedo was thrown against the side of the car; it exploded with a long bang. Mrs. Wilson screamed. In an involuntary reaction to the two loud noises, Wilson twisted the steering wheel, and the car ran up over a curbing and into the side of Snyder's house. Mr. and Mrs. Wilson both sustained personal injuries. The Snyder house and the James car were damaged. Police investigation revealed that McDougald threw the torpedo.

Which, if any, common-law remedies are available to any of the persons named above, and against whom?

PART II

Write the answers to the following questions in the examination book. Do not write any part of your answer on the first or second page of the book, or of any additional book you may use; start writing on page 3 of each book.

Begin each answer with a statement of your decision or your conclusions. Discuss all points and issues involved, and give reasons fully, but succinctly. If you think that further facts have to be assumed, assume them and say what they are. If you think that ambiguities exist, point them out and resolve them in some stated way, or deal with the question on the basis of alternative resolutions.

1 and 2. George Bernard is the author of a play entitled "Coffee and Commiseration," which deals in a thoughtful and non-sensational manner with the subject of homosexuality. He has entered into a contract with Lewis Wayward whereby Wayward will produce the play on the stage and otherwise exploit it commercially, and Bernard will become entitled to certain royalties based on receipts from stage, motion picture, and television production. Wayward has engaged a staff and actors, the sets have been built, and rehearsals are well along. Wayward has also entered into a written lease with Hubert, the owner of a theater, covering the first six months of what is hoped will be an extended stage run.

With first night a week away, the local District Attorney has stated publicly that in case the play opens, he will prosecute all concerned, including the theater owner, for violation of the state "obscenity" statute. This statute reads in part:

"Any person who as owner, manager, director, or agent, or in any other capacity, prepares, advertises, gives, presents or participates in any obscene public performance or entertainment shall be guilty of a misdemeanor . . ."

After this announcement was made, Hubert sent notices to Bernard and to Wayward calling attention to a provision in the lease entitling Hubert to terminate it without prior notice, and without further liability of either party to the other, in the event that the lessee "uses the premises to present an obscene performance."

Bernard and Wayward have informed you of the foregoing facts and request your advice. Advise them as to what alternatives they have; what judicial or other remedies either might have, against whom and why; and the advantages and disadvantages of each alternative.

3. Having been a 16-letter man in high school, Joe Blow was considered quite a catch for those who recruit college athletes. Ox College apparently won the competition. In addition to the financial aid permitted by the rules of the National Collegiate Athletic Association and of the Conference to which Ox belonged, Blow was surreptitiously given regular payments for doing his homework, and he was promised and was given a key to one of the Ox Athletic Association station wagons which was never used for official business after 5 p.m. or on weekends. Blow reciprocated by performing magnificently in three sports during his first two years in "college."

Last year Howard Battem, the Ox baseball coach, resigned his position to join the staff of the Pugwash Midgets, a professional baseball team. Shortly

thereafter, in response to an offer of a large bonus payment from Battem, Jon Coup, a star Ox athlete, left college to play professional baseball. Coup had received thousands of dollars in aid and gratuities from Ox and its alumni, and his departure before he had played the full three years of varsity baseball angered Ox athletic officials. They were only slightly mollified when the Pugwash Midgets made a \$500 contribution to the Ox Athletic Association's Scholarship Fund.

Battem has just reappeared in Oxville. He has been seen carrying a check-book and talking to Blow. Last week Blow stopped going to classes, began packing his belongings, and shopped for a Rolls-Royce automobile. Ox's president consults you as to how to protect the investment in Blow. Advise him.

4. W, an Urbana watch-repairman, has received from P, a Champaign pawn-shop operator, a group of 12 watches which P has ordered W to repair and refurbish to make them more salable. At the same time, P^W sent over for repair his personal wristwatch, which he had purchased for \$400 in Switzerland in 1950. The latter watch now sells for more than \$1000 in New York and Chicago stores.

While repairing the watches, W noticed an inscription on one of them which identified it as a souvenir watch purchased by his father at the San Francisco Exposition of 1915. When W was a boy, his father had promised to give him this watch when he reached the age of 21, but his father had lost the watch before he died in the '30's, while W was still in high school.

W then offered to buy the watch from P for \$25, which is more than P could get for it elsewhere. P refused the offer, whereupon W declined to return any of the watches unless P would sell him the souvenir.

P seeks your advice. He further informs you that the reason that he will not let W buy the souvenir watch is that he, P, erred in sending it out for repair before the redemption period expired, that the pawnor has demanded its return, and that P might lose his pawn-shop license if he fails to redeem a pawned item upon tender of the amount owed thereon. Recommend a course of action to P, carefully explaining why you prefer it to any alternatives which may exist.

NAME _____

NO. _____

MIDSEMESTER EXAMINATION IN JUDICIAL REMEDIES (Law 305)

December 4, 1959

Professor Stone

TIME: Fifty Minutes

PART I

INSTRUCTIONS

If you think that any further facts have to be assumed, assume them and say what they are. If you think that ambiguities exist, point them out, and resolve them in some stated way, or deal with the question on the basis of alternative resolutions.

Write the answer to Part I in the examination book. Please do not write anything except your name on the cover page; start writing on page 3.

* * *

A car belonging to Paul Hays, a citizen of the State of Everlasting Common Law, broke down while he was driving along a highway in that State. A cruising police patrol noted his plight, and by radio called to his aid a truck manned by two employees of the ABC Auto Repair Company, a local corporation. When the truck arrived, Hays said, "I think it's gasket trouble."

Employee A said, "Let's have a look." They looked.

Then Employee A said, "Yep, it's a gasket. We'll have to take it in." Hays scowled.

They towed the car in, worked on it, repaired it, and then presented him with a bill for \$175.00. Hays said, "This is highway robbery. I won't pay such an outrageous bill."

The ABC employees then refused to allow Hays to take the car, whereupon he came to see you, a local lawyer. Hays wants the car now.

(a) Explain to Mr. Hays what judicial remedies might be available to him and why. (Your state does not recognize artisans' liens.)

(b) After you have finished explaining to Mr. Hays, he receives a telephone call. The manager of ABC informs him that they will not continue to hold the car, but that the amount of the bill will not be changed. "I'll get the car right away," says Mr. Hays, "but if I refuse to pay that awful bill, what can they do to me?" Tell him (in terms of judicial remedies).

Name _____

No. _____

FINAL EXAMINATION IN JUDICIAL REMEDIES (Law 305)

First Semester 1959-1960

Professor Stone

TIME: 4 HOURS

PART I

Write the answers to the following questions in the examination book. Do not write any part of your answer on the first or second page of the book, or of any additional book you may use; start writing on page 3 of each book.

Begin each answer with a statement of your decision or your conclusions. Discuss all points and issues involved, and give reasons fully, but succinctly. If you think that further facts have to be assumed, assume them and say what they are. If you think that ambiguities exist, point them out and resolve them in some stated way, or deal with the question on the basis of alternative resolutions.

* * *

1. M. Lucien was imported to cook exclusively for the Rive Gauche, a Washington restaurant. His contract provided that he would serve the Rive Gauche for five years, and would not act as chef for any other employer during that period. The management accused him of jumping his contract and removing himself to the kitchen of a rival restaurant, the Cordon Bleu. The Rive Gauche obtained a temporary restraining order to prohibit M. Lucien from practicing his art for the Cordon Bleu.

a) M. Lucien made a motion to dissolve the temporary restraining order. What ruling? Why?

b) The Rive Gauche charges that while the temporary restraining order was in effect, M. Lucien illegally cooked a souffle; moreover, that he was seen to add a pinch of something to another dish. A policeman who happened to be in the Cordon Bleu kitchen on business testified in support of the charge. There was no denial. The Rive Gauche asks that M. Lucien be held in contempt. What ruling? Why?

c) After disposition of the foregoing, the court is asked for a permanent injunction against M. Lucien. Should it be issued? If so, what should its terms be? Why?

(After the examination, compare editorial, Chicago Tribune, Monday, January 18, 1960, p. 20, col. 2.)

2. An opinion rendered by Judge Xam in the case of Parker v. Garrison begins with the following statement:

"The bill alleges that John T. Parker, about the first of February, agreed to sell a tract of land to Lewis Garrison for \$4620, to be paid in instalments, with interest; that nothing was paid on the purchase, but Garrison went into possession of the land, and raised a crop of corn thereon; that, having failed, and being unable to pay the first instalment falling due, Garrison prevailed on Parker to release him from the purchase, with the agreement that Parker should treat him as

a tenant, and receive from him, for the use of the land during the year, one-half of the crops raised on the land, to be paid in corn; that Garrison raised on the premises three thousand bushels of corn; that Garrison hauled to Manteno and delivered to Adam Sockie about six hundred bushels of the corn, and stored the same in his own name, and was hauling the remainder to him to be stored in the same manner; that Sockie refused to let Parker have the corn or to pay him for the same, and that Garrison is insolvent, and intended to defraud complainant out of his rent. The bill makes Garrison and Sockie defendants, and prays that Sockie be restrained from delivering the grain to, or paying Garrison therefor, and that Garrison be restrained from selling, mortgaging, pledging, etc., the grain.

"To this bill a demurrer was filed, which the court sustained and dismissed the bill, and the complainant appeals to this court."

Complete the opinion for Judge Xam.

(After the examination, compare Parker v. Garrison, 61 Ill. 250 (1871).)

3. When attorneys Farley and Granger dissolved their law partnership, they signed an agreement which included the following provisions, among others:

- a) When and if Zoom, Inc., an impoverished but promising client, should ever choose to show its gratitude for past indulgences as to fees by issuing some of its stock to either of the partners, the opportunity should be shared equally by both.
- b) When and if any dispute should arise concerning the agreement, it should be submitted to arbitration before a board consisting of one arbitrator nominated by each lawyer, and a third nominated by the president of the local bar association.

Granger has heard that Zoom, Inc., has sold Farley 1000 shares of its stock at \$5 a share, a price which is substantially below the market price of the stock, and has issued him certificates therefor. Too busy and too wise to act as his own lawyer, Granger consults you as to what he can and should do in the situation. Advise him. (Your state has no legislation on the subject of arbitration.)

FINAL EXAMINATION IN JURISPRUDENCE (Law 351)

First Semester 1958-1959

Professor Carlston

PART I

IMPORTANT: You will find a number in the upper right-hand corner of this page. This will be your examination number. Grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination booklet.

You are supplied with two booklets in which your answers are to be written in your own handwriting. You will use your natural style of writing, i.e., do not write in small characters in order to get more words on the page. You may use only these books for writing your answers.

1. Discuss the social function served by property, contract, tort, and criminal law.
2. (a) Would a stable society be able to function if its law were limited to the fields listed in Question 1?

(b) Would a stable society be able to endure without legislation?
3. List the ideas and questions which are suggested to you by the material under heading V on pages 816-819 of the text. Such ideas and questions should be those which seem to you to be significant in the light of the understanding of law generally, as well as the meaning of property, which you have acquired from this course.

FINAL EXAMINATION IN JURISPRUDENCE (Law 351)

First Semester 1958-1959

Professor Carlsten

PART II - Hohfeld Jurisprudence
(One Hour Allowed)

IMPORTANT: You will find a number in the upper right-hand corner of this page. This will be your examination number. Grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination booklet.

State concisely in Hohfeldian terms the legal relations involved in the following two cases, translating to the extent possible the statements made into Hohfeldian description. If you are in doubt in any one situation, indicate your opposing choices and state why you had difficulty in selection of the appropriate category.

1. A was the owner of an RCA-Victor television set which was located in his home in Champaign. The set was out of order. A called X, a television engineer, to come to the house and repair it. A gave X his address, a description of the set, and told him that he and his family would be out of town for the approaching week-end, but that he could enter the house by use of a house key which would be left with the next-door neighbor. He could accordingly do the work while the family was away.

B, a university student, roomed at A's house. Unknown to A, B had purchased a used RCA-Victor television set, very similar to A's set. This set was also in A's house, in B's room, which was on the first floor. B's set was out of order when he purchased it, but he intended to repair it himself. B also left town for the Thanksgiving vacation. During the absence of both A and B, X entered the house, but, without seeing A's television set, by mistake repaired B's set. The mistake was not discovered until a few days later when A received a \$40 repair bill from X, \$15 of which was for parts and \$25 for labor. X, informed of the mistake, then billed B for the \$40. Both A and B refused to pay.

2. In 1925 D leased a tract of grazing land from A for a term of 25 years. In 1926, to secure water for his cattle on the leased tract, D laid a pipe to a natural spring on P's adjoining tract and pumped water therefrom. P protested to D a number of times about the taking of the water and even threatened suit, but did nothing more. D continued the use of the water. At the expiration of D's lease, D purchased the leased land from A. In 1954 P brought a suit against D to enjoin the taking of water from the spring.

FINAL EXAMINATION IN JURISPRUDENCE (LAW 351)

First Semester 1959-1960

Professor Carlston

PART I

IMPORTANT: You will find a number in the upper right-hand corner of this page. This will be your examination number. Grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination booklet.

You are supplied with two booklets in which your answers are to be written in your own handwriting. You will use your natural style of writing, i.e., do not write in unusually small characters in order to get more words on the page. You may use only these books for writing the final answers to the questions.

Prepare an outline of this course, as we have so far covered it, under three headings: (1) the ends of law; (2) the growth of law in society; and (3) the nature and structure of law. This is to be a topical outline, that is, with headings I, A, 1, a, etc. You may include short explanations or statements wherever you find it desirable. Do not obviously borrow from any outlines of topics furnished you in this course. It would be preferable not to adopt literally the chapter headings for the entire book; for example, you might want to combine some chapters. Again, you might want to shift topics or ideas as they were taken up chronologically in the course to another place where you believe they would logically fit in your outline. You will be graded on the clarity and comprehensiveness of your outline and the degree to which it shows you have absorbed and understood the course. The materials on which you will be graded will be the text and the ideas developed in class discussions and lectures.

FINAL EXAMINATION IN LABOR LAW (Law 347)

First Semester 1958-1959

Professor Fleming

TIME: 3 1/2 HOURS

I. X department store, which is located on the state line in Dismal City, employs 80 clerks. The store handles merchandise from all over the world and does an excellent business. Z union decided to undertake the organization of X's 80 clerks. Planning its organizing campaign carefully, Z sought and obtained from other local unions the names and addresses of wives or relatives of union members working in the store who might be favorable to the union. From among this group it then recruited a nucleus who agreed to push for the organization of a union in X.

Z's second step was to assign a representative to distribute union leaflets to employees as they came to work in the morning and as they left in the evening. This was not very successful because X is located on a busy street corner where it was difficult to identify which persons were employees, and because the city requires as a condition for permitting distribution of leaflets that the distributor agree to pick up all discarded paper so that the streets will be clean. At the same time that outside distribution of union literature was being made, the nucleus of union members in the store attempted to distribute similar literature inside the store just before work began in the morning and just after it closed in the evening. Company supervisors promptly advised them that distribution of any kind of literature on company time or property was forbidden by express rule enacted originally in connection with charitable drives in the community. Thereafter, Z union officially requested permission to distribute leaflets by the above method but was denied permission by the company.

While the above campaign was taking place, store executives made two counter-moves. First of all, they called in employees in groups of ten for a chat with the store manager. In the course of the conversation employees were reminded of what a happy family they had been without "outside" interference, and advised that a union could do them little, if any, good. On the other hand, it was made clear that employees were entirely free to do as they pleased about joining the union and there would be no retaliation. The manager then suggested that it would be helpful for him to know about how many employees were interested in a union. He proposed that employees vote "yes" or "no" orally while he turned his back. This, he said, would give him an idea of the interest without permitting him to identify individual votes. His request was carried out and there was just a sprinkling of votes for the union. As a second step, the store, during working hours, assigned a supervisor to distribute daily bulletins to employees containing extracts from the hearings of the McClellan Committee relating to union abuses.

At the same time the local newspaper, with which X had no connection, took up the fight against unionization and carried on a vicious campaign designed to completely discourage employees from organizing. X occasionally posted excerpts from the newspaper on its bulletin board.

At about this time Z decided that its best strategy would be to resort to peaceful picketing of the store. Because it did not have a majority of the employees enrolled, it first advised the store by registered letter that it was not seeking recognition and that the picketing was purely organizational. The picket signs were carefully phrased to make it clear that the union did not seek recognition.

Based on the above facts answer the following questions:

1. Z alleges that X is guilty of various unfair labor practices. What practices, if any, are unfair, and what should the ruling be?

2. X alleges that the union is guilty of unfair labor practices. What practices, if any, are unfair, and what should the ruling be?

3. X asks the NLRB to order an election in order to determine whether the union represents its employees. What ruling and why?

4. Assume that the NLRB orders an election. The union wishes to appeal the order. May it do so, and if so, on what ground?

5. X goes into the state court asking for an injunction against the picketing and damages for the loss of business it has suffered through the picketing. What ruling in the state court and why?

II. X union and Y company entered into a collective bargaining agreement which contained neither a no-strike nor an arbitration clause. It did, however, include a paragraph which read as follows:

"When an employee is required to fill the place of another employee receiving a higher rate, he shall receive the higher rate."

Employee C was required to fill the place of another employee in a higher rated job. The job in question carried two rates, one for the probationary employee and the other for the regular employee. Both rates were higher than C's regular rate. The company paid C the probationary rate. Thereupon C grieved, claiming that under the terms of the contract he was entitled to the permanent rate when required to fill temporarily the job of another employee. The grievance was discussed by company and union representatives and they were unable to agree. The union then struck.

On this set of facts, and assuming that Y is engaged in interstate commerce, answer the following questions:

1. What relief, if any, could the company obtain from the National Labor Relations Board? Explain.

2. Could the company maintain an action for an injunction and/or damages in a federal court? Explain.

3. Could the company maintain an action for an injunction and/or damages in a state court? Explain.

4. Assume the union did not strike, but brought an action for specific performance and damages in the federal court. What result, and why?

5. If the above contract contained both a no-strike and an arbitration clause, in what way would your answers to the above questions be affected?

III. Mr. A was interested in getting into the dairy business. Toward that end he studied the market conditions in Podunk for some time. Among other things he observed that no milk was offered for sale in paper containers, and that retail sales in stores were small as compared with sales by home delivery. He knew that in order to create large volume sales through retail stores, it was necessary to use paper containers and to sell the milk to consumers for at least 2 cents less than they would pay for home delivery. After satisfying himself that there was a market of the above type in Podunk, Mr. A started in business, hauling all of his milk from across a nearby state line. He sold only at wholesale, principally to

supermarkets, and the sales were in large volume to relatively few outlets. At the time Mr. A entered business in Podunk there were three other dairies, V, Y, and Z, serving the city. The employees of all these dairies were represented by the union, and all were bound by a common contract which the dairies negotiated through a Dairy Association. Mr. A joined the Dairy Association and became a party to the contract with the union.

Two years after Mr. A joined the Dairy Association, the union made a new proposal with respect to pay. As in the past each driver would be paid a base salary, with a commission based on points calculated on the sale of the product. Because Mr. A sold to the supermarkets in such large volume, his drivers accumulated points far beyond those achieved by drivers for the other dairies. The union proposal with respect to commission points was on a graduated scale. To illustrate: no commission would be paid for the first 12,000 points; 1 cent per point for the range between 12,000 to 20,000; and, at the top of the scale, 4 cents for points over 30,000. Only Mr. A would have drivers in the top bracket, and their earnings were already running as high as \$17,500. Mr. A charged that the effect of the proposal was either to force him out of business or to force him to split his routes since the 4-cent rate was prohibitive. The union argued that the purpose of the provision was to ease the heavy loads which were damaging the health of A's drivers, and to provide more jobs for union men by route-splitting. It was also conceded that the drivers for other dairies were jealous of the amounts being earned by A's drivers, and that route-splitting would reduce the individual earnings of A's drivers.

When the union made the above demands in bargaining, Mr. A withdrew from the Dairy Association. Thereafter he was absent at negotiations which, however, made no progress. Finally the union reached an agreement with X dairy, and thereafter each of the others signed the same agreement. Minor modifications were made in the original demands. Mr. A signed under protest, but sought and obtained an additional sixty days within which to purchase additional trucks and plan the necessary route-splitting. After the contract was signed, Mr. A brought an action for treble damages against the other dairies and the union, contending that Section 1 of the Sherman Act had been violated.

What will the arguments of the respective parties be, and what result would you expect?

IV. X is a licensed, over-the-road, trucking firm which has a long-established collective bargaining relationship with Y union. For the past several years the contract has contained a clause stating that X will not require members of the Y union to handle non-union goods.

Z mousetrap company hires X to transport all of its mousetraps to wholesalers all over the country. Z is unorganized and Y now decides that the time has come to attempt to bring Z's employees into the union. Toward this end Y places a single picket outside Z's premises with a sign stating that Z is unfair to organized labor. Y also circulates Z's name to all affiliates with a notation that Z is unfair. When X's employees, who are members of Y union, see the picket in front of Z's premises, they refuse to cross the picket line. Instead they promptly notify X of the situation and remind him of their contractual agreement that employees do not have to handle non-union goods. X responds that despite his agreement with the union, he must insist that his employees load and transport Z's mousetraps. The employees refuse and X then fires them for insubordination. This causes the union to strike. On this set of facts answer the following questions:

1. What possibilities of legal action are open to X? Explain.
2. What can Y do? Explain.
3. What can Z do? Explain.

V. X industrial union wants to organize the Y farm equipment company, which is engaged in interstate commerce. Y is a typical large manufacturer of farm equipment, using assembly line methods. X seeks a unit which will encompass all production workers, including the patternmakers. The latter are highly skilled employees who serve a substantial apprenticeship. They work in a separate part of the plant, which is nevertheless located in the production space. There is a patternmakers union of long standing to which at least some of the patternmakers at Y allege they wish to belong. Finally petitions for an election are filed by both X and the patternmakers. How should the NLRB treat these petitions?

Assume that X is ultimately certified for an agreed-upon production unit. X and Y then enter into negotiations. Y is located in a semi-rural area where a majority of its employees are part-time farmers. For this reason they strongly desire a clause in the collective bargaining contract which will permit them to have both a priority in purchasing the new small tractor which the company is producing, and a 20% price rebate in making the purchase. Y absolutely refuses to discuss this demand but it willingly enters into negotiations on all other subjects. Finally agreement is reached on all items except the one listed above. The union then refuses to sign an agreement without some clause on employee purchase rights, and the company refuses to discuss the matter at all. The union then strikes to enforce the demand.

During the strike the company decides to try to continue to operate. C, who is an employee of the company and a member of the union, voted against the strike and he therefore decides to cross the picket line. As he approaches the plant, some of the pickets see him and begin to direct toward him epithets which are of an extremely coarse and uncomplimentary nature. A few pickets even spit in his direction. At that point C remembers pictures in the morning paper of developments in Cuba with respect to some of Batista's followers and he decides to go home.

During the course of the strike the company hires a number of replacements for strikers. Finally the strike is settled without a purchase clause of the type sought by the union. The contract does include a valid Taft-Hartley union shop agreement.

Based on the above facts, answer the following questions:

1. What, if anything, can the union do about its demand for priority and rebate rights as to the purchase of tractors? Explain and state your conclusions.
2. What, if anything, can C do about his claim that he remained away from work because of the picket line? Explain.
3. What, if anything, can employees who were replaced during the strike do about getting their jobs back? Explain.
4. If the union expels C for conduct detrimental to the union during the strike, what, if anything, can it require the company to do about C under the valid union shop agreement?

FINAL EXAMINATION IN LABOR LAW (LAW 347)

First Semester 1959-1960

Professor Fleming

TIME: 3 1/2 HOURS

I. X union undertook to organize the employees of Y steel company. Y was clearly engaged in interstate commerce. While the union was organizing, the company announced that the annual Christmas bonus would not be paid if the union won because inefficient practices promoted by the union would reduce profits. The company also posted daily extracts from the McClellan Committee hearings with respect to criminal practices in certain unions. During one week employees received two checks which totalled the same amount as the usual single check, but with a letter indicating that the smaller check would have to be contributed to the union in the form of dues if it won the election. Finally, in the last week before the election, the manager called in employees in groups of 25 for a little chat in which he stressed the "homey" atmosphere of the plant without any outside union. Is there anything the union can do about any of the above practices?

Assume that an election was finally held and that the union won. Thereafter bargaining began but the parties were unable to reach an agreement and a strike ensued. The company decided to keep the plant open and to hire replacements. Employees A, B, and C, all of whom held office in the local union, were convicted of throwing rocks through the windows of employees who were going to work and were fined \$25 each.

After the strike had been on for one month the company announced that it would refuse to pay Christmas bonuses to any employees who did not return to work within the next week since the strike was reducing profits and it felt that only those employees who were working deserved such a bonus. The union responded with an unfair labor practice charge. What will the NLRB rule and why?

One month later the union offered to return to work without a contract, but the company refused to reinstate A, B, and C on the ground that they had led the strike, and so the dispute continued. The union filed another unfair labor practice charge against the company. What will the NLRB rule and why?

Thirteen months after the strike began, an employee who had returned to work filed a petition for a decertification election and accompanied it with a 30% showing of interest. Will the NLRB order an election, and, if so, why. If there is a decertification election, who will be eligible to vote?

II. X union was attempting, without success, to organize the Y shoe company. In order to put pressure on Y, X posted pickets at the factory and in front of the customer entrances of Z department store where Y's shoes were sold. The picket sign at the department store read: "Please do not buy Y shoes at this store. They are made by unorganized workers." X also published a full page ad in the local newspaper asking customers not to purchase Y's shoes at the Z store. Despite these steps there was no evidence that Z's employees were refusing in any way to display or sell Y's shoes. Z is part of a national chain of stores. The particular store in question does a business well within the NLRB's jurisdictional standards. It is a leased site in a Shopping Center owned by W. W retains control of all the sidewalks on the site. The union pickets were necessarily walking on W's property. W advised the union that he had no interest whatsoever in the labor dispute with Y, but that he would bring an action in trespass against the union unless the picketing ceased forthwith.

1. Can Y maintain a trespass action against X? Explain.
2. What course of action, if any, is open to Y as against X? Explain.
3. What course of action, if any, is open to Z as against X? Explain.

III. The Beanpole Construction Co. is a national organization which bids on major construction projects all over the country. After being awarded a \$7,000,000 contract in Philadelphia for the construction of a Sports Palace, Beanpole signed a contract with various building trade unions requiring all employees in the respective skill classifications to join the unions as a condition of employment, within seven days of the date of the agreement. The contract also provided that the union would be the sole and exclusive source of referrals of applicants for employment, and that the union would refer without discrimination as to membership in the union but on the basis of past experience with this employer.

Beanpole's contract with the Plumbers' union contained the following clause:

"The Company agrees not to require any plumber or pipefitter to install prefabricated pipe unless such pipe is more than two inches in diameter, in which case it may be prefabricated off-site provided the work is performed at building trades rates under an agreement with a local union of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry."

After construction had started, District 50 of the United Mineworkers Union started soliciting members from among the various tradesmen, all of whom were covered by one or another of the building trades agreements. District 50 finally asked the NLRB for an election and made the appropriate 30% showing. While the construction project was in progress a dispute arose between the Cement Finishers and the Carpenters as to which group should dismantle forms used for pouring concrete. Both unions were signatory to the AFL-CIO jurisdictional agreement and the question was submitted to the Joint Board for decision. An award was made in favor of the Cement Finishers, but the Carpenters refused to accept the award.

1. Is the compulsory membership clause between the Beanpole Co. and the building trades unions valid? Explain.
2. Is the fabrication clause between Beanpole and the Plumbers' union valid? Explain.
3. Will the NLRB grant an election to District 50? Why or why not?
4. What can the employer do to end the jurisdictional dispute between the Cement Finishers and the Carpenters?

IV. Fifty of the fifty-five filling stations in Middletown were organized by the Teamsters union. Since the five unorganized stations continued to cut prices and pay substandard wages, the union was under great pressure to organize them. Despite its best efforts, it was unable to do so because the employees in question refused to join the union. Thereupon the union picketed with the result that deliveries to

the five stations were cut off. The union notified the station owners by registered mail that the union did not desire recognition and that the pickets were there solely for organizational purposes. There was no violence and the picket signs were truthfully and appropriately worded.

Assuming the NLRB will take jurisdiction, what remedy, if any, do the five filling station operators have?

Assuming it is not clear whether the NLRB will take jurisdiction, what remedies do the five operators have?

Assuming NLRB jurisdictional standards are not met, and the state statute reads as follows, what remedy, if any, do the operators have?

"No restraining order or injunction shall be granted by any court of this State, or by a judge or the judges thereof in any case involving or growing out of a dispute concerning the terms or conditions of employment."

Suppose that in the next bargaining session for a new contract the fifty filling stations form an association which represents them in bargaining. In order to hold its own members in line on prices and wages, the association insisted upon inclusion of the following clause in the new contract:

"The Union agrees that upon being advised by the Association that any member of the Association is engaged in unfair trade practices, union members will refuse to perform further services for said employer until such time as the unfair trade practices are discontinued."

All other terms of a new contract had been agreed upon, but the association was adamant as to the inclusion of the above clause, and the union refused to accede to it. The union then filed an unfair labor practice charge, contending that the association was not bargaining in good faith. Assuming the NLRB takes jurisdiction of the case, how will it dispose of the unfair labor practice charge and why?

V. The Stretch Rubber Co. is an integrated industrial plant which has a twelve-year bargaining history with the Rubberworkers union for all production and maintenance employees. Some of the maintenance painters in the plant were dissatisfied with the rate differential they were receiving. They contact the Painters' union with the result that the business agent for that union shortly had 30% of the maintenance painters enrolled in the union and he petitioned at an appropriate time for an election. Both the company and the Rubberworkers union opposed severance of the painters from the over-all bargaining unit. What factors will the NLRB take into consideration in deciding whether to grant the Painters' petition? What result would you expect, and why?

Suppose the NLRB granted the petition and ordered an election. Could the Stretch Co. or the Rubberworkers go into the federal district court and get an order restraining the NLRB from conducting the election? If so, on what ground?

Suppose severance was denied, but in the next negotiation the Rubberworkers, being conscious of the dissatisfaction among its painter members, sought to obtain special wage benefits for them. The company was unwilling to grant special wage concessions and a contract was finally signed without them. After the contract was signed, the union advised the company that it wished to bargain over a special clothing allowance for painters to go into effect immediately. The company claimed that the contract was closed on the subject of further benefits for the painters and that the issue of clothing allowance could not be raised until the present contract expired. Can the union successfully maintain an unfair labor practice charge against the company? Explain.

Suppose X, who was a member of the Rubberworkers Union, but who led the painters in their move for severance, was disciplined by the Rubberworkers for activity tending to undermine the union. X was advised by registered mail of the charges against him, was told to appear before a union committee one month hence, and after a hearing before that committee was expelled from the union. The union then asked the Stretch Co. to discharge him since he was no longer a member of the union and the contract requires membership in the union. What recourse, if any, will X have if the company discharges him? Does X have any cause of action against the union and if so, for what?

NAME _____

No. _____

FINAL EXAMINATION IN LAW AND SOCIETY (Law 383)

First Semester 1958-1959

Professor Locper

INSTRUCTIONS

1. You have 3 1/2 hours for this examination, of which a good part should be spent in thinking rather than in writing.
2. The examination consists of two parts: Part I is short answer and Part II is essay. The time allocation is roughly: Part I, 1 1/2 hours; Part II, 2 hours.
3. In Part II, there are four essay questions of which you are to choose two (one out of each pair). Thus about an hour for each question is allowed. Organize your answers; don't madly fling yourself on a steed and go galloping off in all directions.
4. Part I consists of twelve quotations. On the lined spaces, you are to identify each quotation and give a brief explanation of its meaning in context. Perception is here as important as memory. If you cannot recall exact authorship, don't hesitate to say whom it sounds like and what you think the quotation means.

The following example may be suggestive of what is wanted:

Q.: "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law."

A.: This statement occurs in the early part of Holmes's "The Path of the

Law." In the first part of this essay Holmes is attempting to dispel the "confusion"
between morality and law. For this purpose he enunciates the "bad man" theory and
asserts that legal analysis should be concerned with the prediction of the inci-
dence of the public force through the instrumentality of the courts. This
litigation-oriented "predictive theory" of law is perhaps the basic premise of
American "legal realism."

PART I

1. "Questions of ultimate ends are not amenable to direct proof . . . We are not, however, to infer that acceptance or rejection (of an ultimate end) must depend on blind impulse, or arbitrary choice."

2. "The genealogy of legal myth-making may be traced as follows: Childish dread of uncertainty and unwillingness to face legal realities produce a basic legal myth that law is completely settled and defined. Thence springs the subsidiary myth that judges never make law. That myth, in turn, is the progenitor of a large brood of troublesome semi-myths."

3. "The books are full of schemes of natural rights. There are no schemes of public policies."

4. "A norm is not valid because it is efficacious; it is valid if the order to which it belongs is, on the whole, efficacious."

5. "The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion."

6. "The word rights, the same as the word law, has two senses: the one a proper sense, the other a metaphorical sense. . . . In this anti-legal sense, the word right is the greatest enemy of reason, and the most terrible destroyer of government."

7. "The grandest function of the Law of Nature was discharged in giving birth to modern International Law."

8. "An intellect great enough to win the prize needs other food besides success. . . . connect your subject with the universe and catch an echo of the infinite."

9. "Rules of law, enabling us to determine the operative effect of facts, are not discovered by mere analysis; they are discovered rather by a study of history -- by a knowledge of written statutes, of precedents, and of social mores. The terms and method of analysis here presented are merely to make possible a greater clearness of mental concept and a nicer accuracy of expression."

10. "From the judicial standpoint law is a rule according to which the judge has to decide the law-suits that are brought before him. . . . But law may also be defined as a rule of human behavior. A rule of human behavior and a rule according to which a judge decides law-suits may be two very different things, for men certainly do not always behave in accordance with the same rules that are applied for the decision of their suits."

11. "The great gain in its fundamental conceptions which Jurisprudence made during the last century was the recognition of the truth that the Law of a State or other organized body is not an ideal, but something which actually exists."

12. "If by any means we can determine the early forms of jural conceptions, they will be invaluable to us. These rudimentary ideas are to the jurist what the primary crusts of the earth are to the geologist. They contain, potentially, all the forms in which law has subsequently exhibited itself."

PART II - Essay (2 Hours)

A. Write on one of the following two questions (about one hour):

1. In an article at 71 Harv. L. Rev. 593, Professor H. L. A. Hart says:

"It may help to identify five (there may be more) meanings of 'positivism' bandied about in contemporary jurisprudence:

(1) the contention that laws are commands of human beings,

(2) the contention that there is no necessary connection between law and morals or law as it is and ought to be,

(3) the contention that the analysis (or study of the meaning) of legal concepts is (a) worth pursuing and (b) to be distinguished from historical inquiries into the causes or origins of laws, from sociological inquiries into the relation of law and other social phenomena, and from the criticism or appraisal of law whether in terms of morals, social aims, 'functions', or otherwise,

(4) the contention that a legal system is a 'closed logical system' in which correct legal decisions can be deduced by logical means from predetermined legal rules without reference to social aims, policies, moral standards, and

(5) the contention that moral judgments cannot be established or defended, as statements of facts can, by rational argument, evidence, or proof ('noncognitivism' in ethics)."

Of the various writers we have studied in this course, which of them are "legal positivists" and in what sense(s) of that word? Do you consider yourself a "legal positivist" and if so, in what sense(s)?

2. It has been said that "there are basically only two sources of law: legislation and adjudication." What views as to the relative importance and interrelation of these two sources were held by some of the main writers we have studied in this course? What view of the matter do you take?

B. Write on one of the following two questions (about one hour):

3. Comment on the following statements: (a) "The only truth in theories of natural law is the obvious truth that positive laws are not immune from moral criticism." (b) "The history of the last few years suggests that natural law is a necessary fiction."

4. The Nineteenth Century has been described as the great century of ferment in legal philosophy. What were the main currents of juristic thought in this century? Why was the Nineteenth Century generally a period hostile to natural law?

NO. _____

Summer Session 1960

Can legal "realism" be turned to constructive ends? Discuss.

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NAME _____

NO.

QUESTION II. Professor Stephens. Time: 15 minutes

With regard to the "uneasy case for progressive taxation," if one plausible but uncertain assumption is made, "the logical outcome of the benefit test would . . . be a highly regressive tax system." Indicate the necessary assumption and explain how it would lead to the supposed outcome.

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NAME _____

NO. _____

QUESTION III. Professor Young. Time: 15 minutes

Discuss the following proposition: Our tax system, federal, state and local, reflects strict adherence by the legislative and judicial branches of the government to the ability to pay and benefit principles of taxation.

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Part II

NAME _____

NO. _____

QUESTION VII. Professor Cribbet. Time: 15 minutes

Anglo-American property law has long recognized (since the Statute of Wills, 1540) the power of a testator to dispose of his property interests with relative freedom. In 1960, State X passes an Act which restricts the objects of a testator's bounty to the categories listed in the Statute of Descent, i.e., the will may allocate the amount to be given to relatives of various degrees but it may not go beyond those classes. Any attempt to leave to individuals, corporations, etc., outside the Statute causes the testator to die intestate as to that property. A testator leaves all of his property to a university which claims the gift and alleges that the Act is unconstitutional and void since it is a deprivation of property without due process of law.

Is the Act valid or invalid? Explain your answer in the light of Holmes's philosophy of law and/or the assigned material on "Property as an Institution." (Please write answer on this page.)

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NAME _____

NO _____

FINAL EXAMINATION IN LAW AND SOCIETY (Law 383)

Summer Session 1960

Professor Looper

Part II

Time: 1 1/2 Hours

Write on any two (2) of the following four questions. You have about 45 minutes for each question, but spend a fair part of this in thinking rather than writing.

1. What do you find distinctive about the American contribution to legal theory (as contrasted with the British or Continental)? In the aggregate is the American contribution really significant?
2. What are the real issues in the controversy between "natural law" and "legal positivism"? What are some sham issues in this controversy?
3. Discuss the applicability of Aristotle's theory of justice to some current problems of tax law. As a part of this discussion, you might examine the notion of "fairness" or "justice" in taxation.
4. Discuss and compare the legal philosophies of any two of the following judges (created by Fuller): Chief Justice Truepenny, Justices Foster, Tatting, Keen, and Handy.

(Please write answers in examination booklet.)

NAME _____

NO. _____

QUESTION V.. PROFESSOR STONE. Time: 15 minutes
(Please write answer on this page.)

For those assigned Wolfe v. North Carolina: Discuss the justification for a court's disposing of a case on the basis of an assumption which is contrary to fact.

For those assigned Hannah v. Lorch: Can you justify the sacrifice of individual interest to the legislature's need for information? What, if any, change in the present accommodation of conflicting interests might be preferable?

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NO. _____

QUESTION VI. PROFESSOR HAWKLAND. Time: 15 minutes
(Please write answer on this page.)

"Law is the ensemble of precepts, rules or statutes which govern human activity in society, the observance whereof is sanctioned in case of need by social constraint, otherwise called public force." - 1 Colin et Capitant, Droit Civil Francais p. 1 (1914); see Patterson, Jurisprudence, p. 73 (1953).

Is the quotation a definition of law or a partial characterization of law (a statement about law, giving some of its necessary attributes without purporting to be complete)? Answer the question from the point of view of (1) ideal conceptions of law; (2) institutional conceptions of law; and (3) imperative conceptions of law.

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NAME _____

No. _____

FINAL EXAMINATION IN LEGAL ACCOUNTING (Law 557)

First Semester 1958-1959

Professor Stephens

TIME LIMIT: 3 HOURS

This examination consists of four parts. Each part is marked with a percentage figure to indicate its relative weight for grading purposes, but this may not be an accurate indication of the portion of the examination period that should be devoted to such part. Look over the entire examination and then budget your time with a view to completing it.

PART I (40%)

In this part ten business transactions are briefly described. After each description journal entries are presented that might be used to record the transaction. In each instance, one proposed entry is incorrect; of the other two one is preferable, at least if some further reasonable assumption is made. In the spaces provided, mark the incorrect entry "I"; mark the preferable entry "P"; leave the remaining space blank. Finally, in at most a sentence or two and within the space provided on the examination paper, give your reasons for not selecting the entry which is not marked. The explanatory remarks will be of substantial importance for grading purposes.

1. The A Company purchases from B Company, its regular supplier, \$1000 worth of lumber for fabrication into wooden boxes, A's main product.

a. _____ Purchases	\$1000	
A/P, B Co.		\$1000
b. _____ A/P, B Co.	\$1000	
Profit and Loss		\$1000
c. _____ Inventory	\$1000	
A/P, B Co.		\$1000

2. At the end of an accounting period, the office employees of C Company have earned \$2000 in salaries that will not actually be paid until the fourth day of the next period.

a. _____	Salary Expense	\$2000	
	Cash		\$2000
b. _____	Salary Expense	\$2000	
	Accrued Salaries		\$2000
c. _____	Salary Expense	\$2000	
	Accounts Payable		\$2000

3. D Company returned to E Company, its regular supplier, materials D had purchased in the same accounting period on open account for \$500, and E Company issued a credit memo for that amount.

a. _____	A/P, E Co.	\$500	
	Purchases Returns		\$500
b. _____	A/R, E Co.	\$500	
	Purchases		\$500
c. _____	Purchases Returns	\$500	
	A/P, E Co.		\$500

4. F Co., G's regular supplier of bolts used in its manufacturing operation, raised the price of the bolts \$1.00 per hundred to \$6.00 per hundred. Upon G's protest, F agreed to and did supply G 10,000 bolts at the old price.

a. _____	Purchases	\$600	
	A/P, F Co.		\$500
	Discount on Purchase		\$100
b. _____	Purchases	\$500	
	A/P, F Co.		\$500
c. _____	Purchases	\$600	
	A/P, F Co.		\$500
	Profit on Purchases		\$100

5. The I Company constructs bridges. Its practice is to take up one-half of its expected profit when a job is three-fourths completed and the balance when the job is done. In 1958 it began construction of a bridge and had reached the stage of 80% of completion by the end of the year, its sole project at the time. Anticipated total costs are \$200,000; costs of \$160,000 have been incurred. The price of \$240,000 is to be paid upon completion. Its closing entries, in part:

a. _____	Contracts in Process	\$180,000	
	Sundry Cost Accounts		\$160,000
	Profit on Bridge		\$ 20,000
b. _____	Contracts in Process	\$180,000	
	Profit & Loss		\$180,000
	Profit & Loss	\$160,000	
	Sundry Cost Accounts		\$160,000
c. _____	Accounts Receivable	\$180,000	
	Sundry Cost Accounts		\$160,000
	Deferred Income		\$ 20,000

6. Late in December 1958, J Company sublet to K part of a building that J rented from L. K agreed to pay in advance quarterly rent of \$500 beginning January 1st and paid \$500 upon execution of the sublease, which J Company credited to Miscellaneous Income. Upon closing the books for 1958:

a. _____	Miscellaneous Income	\$500	
	Deferred Income		\$500
b. _____	Miscellaneous Income	\$500	
	Rent Expense		\$500
c. _____	Prepaid Rent	\$500	
	Miscellaneous Income		\$500

7. During the year the M Company became liable for real property taxes of \$3000, which it paid when due and charged to Tax Expense when paid. At the end of 1958 it appeared that \$500 of this amount was properly paid but paid as tax on a building that was under construction and would not be completed until mid-1959. The year-end adjusting entry:

a. _____	Prepaid Taxes	\$500	
	Tax Expense		\$500
b. _____	Deferred Expense	\$500	
	Tax Expense		\$500
c. _____	Land and Buildings	\$500	
	Tax Expense		\$500

8. At the end of 1958, the N Company's directors decide to expand its manufacturing business and to build a new plant that will cost \$100,000, funds for which should be set aside.

- | | | | |
|----------|---|-----------|-----------|
| a. _____ | Profit & Loss (1958) | \$100,000 | |
| | Reserve for Plant Expansion | | \$100,000 |
| b. _____ | Retained Earnings | \$100,000 | |
| | Reserve for Plant Expansion | | \$100,000 |
| c. _____ | No journal entry but note in annual statement explaining directors' plans | | |

9. The O Company follows the practice of crediting Reserve for Bad Debts periodically with a percentage of sales and charging the same account with debts written off as uncollectible. When P went through bankruptcy in 1956, O Company wrote off the \$600 that P owed to O for purchases on open account. In 1958 P voluntarily paid O the full \$600.

- | | | | |
|----------|-----------------------|-------|-------|
| a. _____ | Cash | \$600 | |
| | A/R, P | | \$600 |
| b. _____ | Cash | \$600 | |
| | Reserve for Bad Debts | | \$600 |
| c. _____ | Cash | \$600 | |
| | Bad Debts Collected | | \$600 |

10. The Q Company filed a claim for refund of federal income tax paid for the year 1952 and after extended negotiations with the Internal Revenue Service received a refund check for \$5000 in 1958.

a. _____	Cash	\$5000	
	Retained Earnings		\$5000
b. _____	Cash	\$5000	
	Miscellaneous Income		\$5000
c. _____	Cash	\$5000	
	Tax Expense		\$5000

* * * * *

PART II (20%)

This part consists of four questions that are to be answered briefly. If possible, confine your answer to the space provided after each question. If absolutely necessary, continue your answer on the back of the page on which the question appears.

1. With respect to its investments, Able Corporation follows the practice of making year-end adjusting entries so as to reflect investments in its accounts at the lower of cost or market. In 1956 Able purchased 100 shares of Baker stock, which it still owns, for \$100 per share. At December 31, 1956, the stock was worth \$11,000, but on December 31, 1957, it was worth only \$9,000. Baker had a good year in 1958 and by December 31 of that year its stock was selling on a major stock exchange for \$150 per share. What adjusting entry, if any, should be made at the end of 1958? What bearing, if any, should the fluctuation of the Baker stock have on the propriety of dividend declarations by Able Corporation?

2. Charlie Corporation decided to raise funds for expansion by way of a bond issue. It was decided to issue \$100 face amount ten-year bonds at an annual interest rate of 4.5%, but at the time of issuance the company was advised that the bonds would not be marketable unless the yield to lenders was 5%. Should the bonds be issued at a cost to investors of \$85, \$90, \$95, or \$100? Show the proper journal entry upon the sale of one bond at the determined price and indicate very briefly how the transaction will affect the determination of the income of Charlie Corporation in the current year and future years.

3. Dog Corporation had authorized 10,000 shares of \$100 par common stock of which 9,000 shares were outstanding, all issued at the time of incorporation and paid for at par. On July 1, 1958, it issued the remaining 1,000 shares that were authorized and received \$200 per share. As of the end of 1958 the Dog Corporation balance sheet reflected, among other things:

Paid in Surplus

\$100,000

Criticize the term used to designate this account in part by explaining another way in which a credit to "Paid in Surplus" might arise.

4. Journalize and explain the legal and accounting significance of the following transaction: Easy Corporation, with retained earnings of \$200,000, declares and distributes to its shareholders a stock dividend consisting of 1000 shares of \$100 par value common stock. Indicate a genuine business reason that might induce such action.

PART III (20%)

There are just two questions in this part. They are of equal value for grading purposes.

1. Fox Corporation is in the merchandising business and deals in only one commodity. During the year 1957, it made the following purchases at the following prices:

<u>Date</u>	<u>No. of Units</u>	<u>Price</u>
January 1	10,000	1.00
April 1	20,000	1.10
July 1	10,000	1.10
October 1	10,000	1.20

It sold 50,000 units during 1957. Its balance sheet as of December 31, 1956, showed an inventory figure of \$50,000 (which reflected 50,000 units on hand). Its balance sheet as of December 31, 1957, also showed an inventory figure of \$50,000.

In 1958, Fox Corporation again sold 50,000 units. Its purchases for the year were as follows:

<u>Date</u>	<u>No. of Units</u>	<u>Price</u>
January 1	20,000	1.25
April 1	10,000	1.25
July 1		
October 1	20,000	1.00

Determine the cost of goods sold for 1958. Show and fully explain your computations.

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Delivery Truck:

In accordance with the depreciation method that has been adopted by the Company, determine depreciation expense for 1958. Show your computations, and indicate why you think George Corporation may prefer the method adopted over other possible methods.

PART IV (20%)

At the close of 1958 the ledger accounts of Wholesale Suppliers, Inc., reflected the following balances:

Cash	\$8,000	Sales Returns	\$ 500
Inventory (1/1/58)	14,000	Purchases	16,000
Furniture & Fixtures after reserve for depreciation	4,500	Purchases Returns	1,000
A/R, Smith	500	Advertising Expense	500
A/R, Jones	5,000	Accrued Wages	500
Note Payable	6,000	Wages Expense	2,500
A/P, Black	4,000	Common Stock	14,000
A/P, White	100	Surplus	6,400
Sales	20,500	Dividend Paid	1,000

In accordance with the Company's regular practices, the closing inventory is determined to be \$15,000.

1. On the basis of the facts given, fill out the Trial Balance, P & L Statement, and Balance Sheet columns on the work sheet form provided on the next page.
2. Prepare a Balance Sheet for Wholesale as of December 31, 1958, in account form, and a simple income statement and statement of surplus changes for 1958, disregarding the question of taxes. (Use this page and the back of it to answer this and the next question.)
3. If you had money to invest and the principal shareholder in Wholesale Suppliers offered to sell you 25% of the outstanding stock of the company for \$5500, what would your reaction be? Explain fully.

Wholesale Suppliers, Inc. -- Dec. 31, 1958

[illegible]

FINAL EXAMINATION IN LEGAL PROFESSION (Law 350)

First Semester 1958-1959

Dean Sullivan

MAXIMUM TIME: 1 1/2 hours

1. A was licensed to practice both as an attorney and as a certified public accountant and he had engaged in the practice of both professions. As an accountant, he had done work for the J.B. Company. Three years later Shapiro, president of the J.B. Company, discussed with A the bringing of a suit against the United States to recover income taxes which Shapiro thought had been overpaid. A wrote a letter to Shapiro agreeing to bring the suit on a contingent-fee basis for a fee of 50% of the money. The letter then read as follows:

"We will, of course, bear the expense of the expert. We will bill you for the filing fees and such other minor incidental costs as may be incurred pursuant to rules of the District Court. We would appreciate your signing the original of this letter to signify your consent to this proceeding. Will you please return the signed letter as soon as possible, and retain the duplicate for your files.

(Signed) A"

"(Signed) Shapiro. As approved by Shapiro subject to above deletion as discussed with A."

The sentence beginning "We will bill you" had been deleted by drawing a line through the words.

A was successful in the law suit and the United States sent a check for \$9,000, being \$8,000 refund plus \$1,000 interest. A is holding the check and he demands that Shapiro agree to pay \$4500 from the check before A is required to turn it over to Shapiro. Shapiro refuses and A seeks to enforce his lien. What result? Why?

Does A's conduct violate the standards of professional ethics? Discuss.

2. L.M., an attorney at law admitted to practice in State X, represented D, the defendant, in a prosecution in the United States District Court under the Smith Act for advocating the overthrow of government by force and violence. The trial lasted more than six weeks. During this period A, an officer of the union of which D was a member, arranged some meetings to arouse interest in the outcome of the suit and to raise funds to help pay the expenses. L.M. attended two of these meetings and made speeches. Reporters from the local newspapers were present and they reported and the papers printed a story that L.M. attacked the judge in the proceedings by saying, "This trial is a phony," "They are making up the rules of evidence as they proceed in this trial," "D is being persecuted in this trial," and "The FBI is out to break this union by a smear campaign of communistic charges."

Charges were filed with the grievance committee of the local bar association. The committee members had been appointed as commissioners in the State Supreme Court to hear complaints and make recommendations to the Court. Upon these facts (assuming that L.M. does not deny that he made the statements attributed to him), what action should the committee and the Court take? Discuss.

3. C, the client, has employed A to represent him in an action to recover damages for a personal injury sustained in an automobile accident. After the complaint was filed, C insisted on participation in the decisions on the witnesses to be called, the proof to be elicited from the witnesses, etc.

Discuss the scope of the authority of A to control all phases of the litigation.

FINAL EXAMINATION IN LEGAL PROFESSION (Law 350)

First Semester 1959-1960

Dean Sullivan

TIME: 1 1/2 HOURS

1. Comment on the following practices in the light of the decision of the Supreme Court of Illinois in "In re Brotherhood of Railroad Trainmen":

1. The practice of attorneys or their representatives at any time, whether organized or in isolated instances, in soliciting directly or indirectly by personal contact, telephone, or other means, legal business or causes of action of any kind or description.
2. The practice of attorneys engaged in the defense of personal injury actions for and on behalf of insurance companies in inducing by solicitation, suggestion, or other means injured parties to retain their services or the services of other attorneys named by them in establishing claims for injuries or property damage, arising out of accidents in which the insurance companies represented by such attorneys carry the liability insurance for the injured party.
3. The practice of attorneys in expending substantial sums for elaborate entertainment of individuals or corporate representatives at private clubs or otherwise as a means designed for obtaining legal business, or by the bestowal of gifts of substantial value to such parties, for the purpose of inducing such individuals, representatives, or their corporate principals to retain or engage the services of such attorneys in any legal matters or business.
4. The practice of attorneys in soliciting insurance companies or other corporations by any means to employ or forward legal business to them.
5. The practice of attorneys for insurance companies, railroads, and other corporations or their representatives or claim departments in inducing parties seriously injured as a result of an accident for which their principals may ultimately be held liable, to settle their claims before they have had adequate opportunity to confer with and obtain the advice of counsel of their own choice.

2. In a personal injury action in State X, the case was tried for a corporation of State Y by an attorney in State X. The decision was against the corporation. On appeal an attorney from State Y prepared the brief and argued the case. In the brief Y attorney contended that: "It is shown by uncontradicted evidence that an interval of 15 to 20 minutes had elapsed between the all-clear signal, followed by an air brake test, which took thirty seconds, and the actual starting of the train by the engineer." The Appellate Court examined the transcript of the evidence in the case and found no ground whatever for this statement. Since this might have influenced the result in the case, attorney Y is directed to show cause why he should not be disciplined.

- (a) Decide the case. Give reasons.
- (b) Discuss the following quotation:

"The extent to which it is regarded as counsel's duty to advise the court as to matters relevant to the proper decision of the case

of which opposing counsel is ignorant or which he has overlooked turns on the degree to which the old idea that litigation is a game between the lawyers has been supplanted by the more modern view that the lawyer is a minister of justice. Always, however, must be borne in mind the principle that the theory of our system is still that justice is best accomplished by having all the facts and arguments on each side investigated and presented with maximum vigor by opposing counsel, for decision by the court and jury."

TIME: 4 HOURS

Note: Wherever canons of interpretation may be relevant, they should be noted.

1. A federal statute is entitled "An Act to punish the purchase and sale of public offices." It consists of two sections which read as follows:

"Sec. 1. Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"Sec. 2. It is unlawful to solicit or receive from anyone whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office or place under the Government of the United States. Whoever is guilty of a violation of this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

An information was filed in a federal district court alleging that defendant Jackson had offered Adams, a member of the Congress, to contribute \$1,000 per year to the Republican Party in consideration of the Congressman's use of his influence to procure for the defendant the postmastership of a designated municipality. The information alleged this to be a direct violation of Section 1, although it did not charge that the Congressman would directly benefit from the payment of money to the Republican Party. The district court granted a motion to dismiss for failure to state facts sufficient to constitute an offense against the United States. The government appeals to the United States Supreme Court.

The Committee Report which accompanied the introduction of the bill stated in part as follows:

"This bill seeks to punish the purchase and sale of public offices. Certain members of Congress have brought to the attention of the House both by speeches on the floor and statements before the Judiciary Committee a grave situation, disclosing corruption in connection with postal appointments in Mississippi and South Carolina. It is believed that this bill will prevent corrupt practices in connection with patronage appointments in the future."

The Congressman who introduced the bill, in describing the corruption to which the Committee Report refers, said, in response to the question, "Where did this money finally find its home?",

"I do not know. As I said here once before, I doubt if much of it gets to the Republican Executive Committee, but I do not care where it goes. Either it goes into his pocket and the pockets of his machine or

it goes into the coffers of the Republican Party. If it does, it is the most blatant defiance of the civil service law that any party has ever had the hardihood to put over, and it is as disgraceful as the Teapot Dome proposition any day."

Other aspects of the Committee Report and legislative history shed no further light on the problem.

(a) As counsel for the government, develop your interpretative analysis in support of the information.

(b) As counsel for the defendant, develop your interpretative analysis in support of the district court's order.

(c) As a member of and speaking for the United States Supreme Court, give your decision and reasons.

2. In 1943, the Illinois General Assembly enacted a law, the title and Section 1 of which read as follows:

"A Bill

For an Act to authorize the investment of public funds of public agencies in obligations of the United States of America.

/Enacting Clause (assume in proper form)/

"Sec. 1. Any public agency may invest any public funds in bonds, notes, certificates of indebtedness, treasury bills or other securities now or hereafter issued by and constituting direct obligations of the United States of America. Any such securities may be purchased at the offering or market price thereof at the time of such purchase."

The remainder of the section defines "public agency" and "public funds." The Act contained no provisions imposing civil or criminal penalties upon public officers making investments not authorized by this Act.

In 1957 the General Assembly enacted two laws, one amending Section 1 of the aforesaid Act (H.B. 350) and the other an original act (S.B. 590). House Bill 350 inserted the following language after the word "America":

"or may invest in shares or other forms of securities legally issuable by savings and building and loan associations incorporated under the laws of this state or any other state or under the laws of the United States; provided, however, that investments may be made only in those savings and loan or building and loan associations the shares, or investment certificates of which are insured by the Federal Savings and Loan Insurance Corporation."

The remainder of Section 1 was set forth and repeated without change.

Senate Bill No. 590 was an act entitled "An Act to make unlawful, and to prescribe penalties for, the investment of public funds by public agencies in violation of limitations prescribed by law." The body of the Act read as follows:

"Sec. 1. It is unlawful for any public officer to invest public funds except as authorized by 'An Act to authorize the investment of public funds of public agencies in obligations of the United States of America,' approved July 6, 1943. Any public officer who violates the provisions of this act shall be fined not more than \$5,000 or imprisoned for not more than 5 years, or both."

The corporate authorities of the city of Champaign, a public agency within the definition of the aforesaid laws, desire to invest \$50,000 of public funds in the shares of a state building and loan association, which shares are issued by the Federal Savings and Loan Insurance Corporation, a governmental instrumentality. They ask your advice, as city attorney, as to their legal power to do so. Analyze and discuss the constitutional and interpretative issues involved in the foregoing legislative history.

3. The Federal Trade Commission issued a complaint charging the X Department Store, a retailer, with "false invoicing" in violation of Section 3 of the federal Fur Products Labeling Act. An administrative hearing resulted in findings of violation. The Commission issued a cease and desist order and the X Department Store sought judicial review in the appropriate Court of Appeals, which set the order aside. The Commission appeals to the United States Supreme Court.

Section 3 reads as follows:

"The manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, and which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this Act, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act."

Section 2 of the Act defines the term "invoice" as a "written account, memorandum, list, or catalogue, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs."

Section 5 provides that a fur product or fur is falsely invoiced "if it is not invoiced to show (a) the name of the animal that produced the fur; and, where applicable, that the product (b) contains used fur; (c) contains bleached, dyed, or other artificially colored fur; (d) is composed in whole or substantial part of paws, tails, bellies, or waste fur; (e) the name and address of the person issuing the invoice, and (f) the country of origin of any imported furs."

Section 4 requires each fur product or fur to have affixed thereto a label and provides that a fur product is misbranded if it is falsely or deceptively labeled or if there is not affixed a label setting forth the same items of information required for an invoice under Section 5. Labels need not be pieces of cloth sewn into the fur products. They can be tags attached by string to the garment.

The Commission found that respondent had violated the "invoice" provisions of the Act by failure to include in many of its retail sales slips of fur products (a) its address, (b) whether the fur was bleached, dyed or otherwise colored artificially, and (c) the correct name of the animal producing the fur. The Commission did not find any violations of the labeling requirements of Section 4.

The title of the Act states that its purpose is to "protect consumers and others against false invoicing, misbranding and false or deceptive advertising." The Committee Reports speak generally of the protection of consumers and others from "widespread" abuses "arising out of false and misleading matter in advertising and otherwise."

Analyze and discuss the interpretative issues, giving decision.

4. In February 1959 the Supreme Court of Illinois upheld the validity of exculpatory clauses in business and residential leases exempting the lessor from liability for injuries to persons or property caused by or resulting from the negligence of the lessor, his agents, servants or employees, in the operation or maintenance of the demised premises. Shortly thereafter H.B. 129 was introduced in the Illinois General Assembly, passed both Houses, and was signed by the Governor early in May 1959. Its provisions are as follows:

"Every covenant, agreement, or understanding in or in connection with or collateral to any lease of real property, except those business leases in which any municipal corporation, governmental unit, or corporation or instrumentality of the State or federal government is lessor, and except leases of property designed and used for single family dwelling purposes, exempting the lessor from liability for damages for injuries to person or property caused by or resulting from the negligence of the lessor, his agents, servants or employees, in the operation or maintenance of the demised premises or the real property containing the demised premises, shall be deemed to be void as against public policy and wholly unenforceable."

In 1957, the X Building Corporation had leased business premises to Jones and Adams, a partnership engaged in light manufacturing in the leased premises. The lease was for a period of five years and contained the exculpatory clause. Assume that in September 1959 Jones is injured on the premises as the result of the negligence of the lessor's employee in repairing a section of the floor. Jones files suit for damages against the X Building Corporation. What defenses would the defendant raise? Analyze and discuss all such defenses and give decision.

5. Answer the following questions true (T) or false (F) in the examination booklet:

- (1) Under Article 4, Section 20 of the Constitution of Illinois, an act appropriating public funds to a named person for a purpose which cannot be public in nature is unconstitutional.
- (2) Incorporation of an act by reference is not permissible under the Constitution of Illinois.

- (3) An act which is general in form but special in fact and which deals with a subject specifically enumerated in Article 4, Section 22 of the Constitution of Illinois cannot be valid under that section.
- (4) A law which changes a crime from a felony to a misdemeanor and which applies retroactively to crimes committed before its effective date is invalid as an ex post facto law.
- (5) Under the Illinois Constitution, a statute is invalid in its entirety if the title embraces two distinct and unrelated subjects where the body of the act contains only one of the subjects expressed in the title.
- (6) A statute will not be construed to have retroactive application unless it expressly so provides.
- (7) In Illinois a statute reviving a cause of action barred by the statute of limitations is valid.
- (8) Statutes in pari materia will be construed to make them harmonious and consistent with each other.
- (9) Canons of interpretation may not be ignored by the courts where their employment is necessary to clarify uncertain or ambiguous meaning.
- (10) A long continued and consistent administrative interpretation of a statute which is not amended at any time after its original enactment does not prevent the court from adopting a contrary or modified interpretation.

TIME: 4 HOURS

NOTE: Wherever canons of interpretation or presumptions may be applicable, reference thereto should be made. Questions are rated as follows: 1 and 4, 25%; 2 and 3, 20%; 5, 10%.

1. Prior to the enactment by the Congress of the 1954 Internal Revenue Code, the predecessor Code contained the following two sections:

"Sec. 15. (a) If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax . . . by levy upon all property and rights to property belonging to such person.

"(b) The term 'levy' as used in this title includes the power of distraint and seizure by any means. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

"Sec. 16. (a) Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

"(b) Any person who fails or refuses to surrender as required by subsection (a) any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6% per annum from the date of such levy.

"(c) The term 'person,' as used in subsection (a), includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property, or rights to property, or to discharge the obligation."

Both these sections were re-enacted without change in the 1954 Internal Revenue Code. In 1955 the Congress passed an amendment to Sec. 15 in the following form:

"An Act to amend Section 15 of the Internal Revenue Code of 1954

"[Enacting clause (assume in customary form)]"

"Section 1. Amend Section 15 of the Internal Revenue Code of 1954, in subsection (a) thereof, by adding the following sentence at the end of said subsection:

Levy may be made upon the accrued salary or wages of any officer, employee, or elected official of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy upon the employer."

The House Report accompanying this amendment stated that it was necessary to overcome the effect of a Supreme Court decision which had held that a federal disbursing officer could not, in the absence of express Congressional authorization, set off an indebtedness of a federal employee to the government against the employee's salary, and a subsequent ruling of the Comptroller General, based on this

Court decision, that an administrative official served with notice of a levy would be without authority to withhold any portion of the current salary of such employee in satisfaction of the notices of levy and distraint.

In February 1956 the Commissioner of Internal Revenue (the delegate of the Secretary of the Treasury) issued the following regulation applicable to Section 15:

"State and municipal employees. Accrued salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency or instrumentality, or political subdivision thereof, are also subject to levy to enforce collection of any federal tax."

In June 1956, the Congress amended Section 15 of the Code, making a slight clarifying change in subsection (b), but effecting no change whatsoever in subsection (a).

In September 1956, the Commissioner of Internal Revenue assessed an excise tax deficiency against two residents of Illinois and forwarded the assessment lists to the appropriate District Director of Internal Revenue for collection. The deficiencies remained unpaid for more than 10 days after demand for payment was made; whereupon the District Director issued notices of levy directed to the State of Illinois and served them upon Smith, the State Auditor of Public Accounts, seizing the accrued salaries of the taxpayers who were employees of the State of Illinois, pursuant to Section 15. Smith refused to honor the levies and instead issued and delivered payroll warrants to the two employees for their then accrued net salaries aggregating \$650.00. Thereafter, the government brought suit under Section 16 against the Auditor in the appropriate district court to recover from him personally the \$650.00 that he had paid in disobedience to the government levies, the said amount being less than the assessed deficiencies.

Under Illinois statutes, state funds are in the custody of the State Treasurer, but no payments of public funds may be made except upon a warrant issued by the Auditor of Public Accounts. The Auditor is also empowered and directed by statute "to deduct and withhold from the salaries of state employees sums to pay taxes as may be required by any act or acts of the Congress of the United States of America." Under this latter statute, federal income taxes are withheld from state employees and paid to the federal government in the same manner as taxes are withheld by private employers.

The District Court rendered judgment for the government. The Court of Appeals reversed, and the Supreme Court granted certiorari.

(a) As counsel for the government discuss all issues and develop your interpretative analysis of the statutes and regulations in issue in support of the suit.

(b) As counsel for the Auditor of Public Accounts, discuss all issues and develop your interpretative analysis in support of his defense.

(c) As a member of the Supreme Court, give decision supported by a brief analysis.

2. Section 34 of the Illinois Drivers' License Law provides that the Secretary of State may revoke or suspend the operator's or chauffeur's license of a person who "has been convicted of not less than three offenses against traffic laws governing the movement of motor vehicles within any 12-month period."

Assume that the Illinois General Assembly in 1957 enacts a law which in form is as follows:

"A Bill

"For An Act to amend Section 34 of the 'Illinois Drivers' License Law,' approved June 25, 1953, as amended, and to add Section 34.1 thereto.

"[Enacting clause (assume in proper form)]

"Section 1. Section 34 of the 'Illinois Drivers' License Law,' approved June 25, 1953, as amended, is amended, and Section 34.1 is added thereto, the amended and added Sections to read as follows:

"Section 34. [Assume Section properly amended as to form, with only change being the substitution of the figures "18" for the figures "12."]

"Section 34.1. Notwithstanding the provisions of Section 34, if a person is convicted of not less than two offenses against traffic laws governing the movement of motor vehicles within any 18-month period, such offenses having occurred within the corporate limits of any city, village or incorporated town of more than 500,000 population, the Secretary of State may revoke or suspend the operator's or chauffeur's license of such person in accordance with the procedures designated in this Act."

Assume the Act becomes effective July 1, 1957. The Secretary of State on September 15, 1957, after appropriate notice and hearing, revokes the operator's license of Adams. The evidence proves that Adams was twice convicted of speeding in Chicago on the following dates: July 26, 1956, and April 1, 1956. Adams seeks a review of this order under the provisions of the Administrative Review Act as authorized by the Act.

Analyze and discuss all issues, giving decision. Assume that the Act of 1957 is in proper constitutional form as regards the title and subject matter provisions of the Constitution.

3. The Federal Kidnapping Law, commonly known as the "Lindbergh Law," punishes anyone who knowingly transports or aids in transporting in interstate or foreign commerce

"any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away by any means whatsoever and held for ransom, reward or otherwise, except in the case of a minor, by a parent thereof."

The Act was passed in 1932 against a background of organized violence in which it had become quite common for ruthless criminals or bands of criminals to seize wealthy adults or the children of wealthy parents, transport them across state lines, and demand ransom payments for the safe return of the person so seized. The Legislative Reports of the House and Senate Committees stress almost exclusively this customary pattern and the helplessness of state law enforcement officials to deter or punish the guilty persons. The Act provides a death penalty or life imprisonment as possible sanctions.

Jones, in the State of Kansas, seduced and had criminal conversation with a 14-year-old girl who consented to the act. Under the laws of Kansas, Jones was guilty of statutory rape. He was indicted on this charge and pending trial was permitted his freedom on bail. The girl, in a juvenile court proceeding, was declared a delinquent child and placed in a state rehabilitation center under the

legal control and custody of the State Director of Welfare. Jones, under an assumed name, visited her, and induced her to agree to a plan of escape to Texas under a promise that he would marry her. In accordance with the plan, the following night, Jones again visited her, bound and gagged the nursing attendant, and escaped with the girl. He transported her to Texas where they lived together for two years as man and wife without benefit of clergy. Subsequently Jones, wearying of the girl's demands that they marry, killed her. He was apprehended by federal authorities in California and returned to Kansas where he was charged with a violation of the Lindbergh Law. The District Court convicted, the Court of Appeals affirmed, and the Supreme Court granted leave to appeal.

Analyze and discuss the issues and give decision.

4. In 1891 the Illinois General Assembly enacted a law authorizing cities to establish, operate, and maintain public hospitals, and to levy a tax therefor. After detailing the provisions relative to acquisition or construction of a hospital, the management thereof, and the procedures for and the limitations upon the levy of a tax, Section 10 dealt with the "use" of the hospital and provided as follows:

"Every hospital established or purchased under this Act shall be maintained for the benefit of the inhabitants of the city in which it is established who are sick, injured, or maimed. But every inhabitant of that city who is not a pauper shall pay to the hospital board reasonable compensation for occupancy, nursing, care, medicines, or attendance, according to the rules and regulations established by the board. For the purposes of this Section, a 'pauper' means any indigent person who has been a bona fide resident of the city for at least 12 months prior to the time of becoming a patient for treatment in the hospital."

In 1874, the General Assembly had enacted the so-called "Paupers Act," which imposed responsibility upon counties to relieve and support all persons who technically qualified as "paupers" and in addition to pay the costs of hospitalization, support, and care of persons who were destitute but who for lack of residence eligibility failed to qualify technically as a pauper. In 1937 the Pauper Act was revised to place the obligation for the support of paupers and other indigent persons upon (1) cities, villages, and incorporated towns having a population in excess of 500,000 (Chicago); (2) in counties not under township form of government, upon the counties; and (3) in counties under township form of government, upon the townships. In each case, liability for support was limited to the residents of the particular governmental unit, but each governmental unit was also required to provide temporary support to indigent persons who were technically not paupers, or to paupers who were legally residents of another chargeable governmental unit, with the right granted to recover the costs of such support against the governmental unit in which the person had established residence, or was living.

In 1949 the General Assembly enacted the "Public Assistance Code of Illinois," a comprehensive act dealing with all phases of governmental assistance. In this Act, they re-enacted the provisions of the Pauper Act without change, and repealed a number of separate laws dealing with public assistance, but neither repealed, amended, nor made reference to the 1891 City Hospital Act.

In 1957 in the City of Champaign, which had established a public hospital under the 1891 Act, a person who did not qualify as a "pauper" under the Public Assistance Code but who did qualify under the City Hospital Act as a "pauper" was treated in the City Hospital for injuries. The City of Champaign is coterminous with the Township of the City of Champaign, which township under the Public Assistance Code is

liable for the support of paupers resident therein, as well as indigent persons who technically do not qualify as paupers. The city hospital rendered medical and nursing services totalling \$4,500, and demanded payment of the township. The demand was refused and the city brings action for recovery of this amount against the township.

(a) As attorney for the city, interpret the statutes in support of its claim.

(b) As attorney for the township, interpret the statutes in defense of the township's claim of freedom from liability.

(c) As a member of the Illinois Supreme Court, give decision and, briefly, reasons in support thereof.

5. Answer the following questions T (true) or F (false) in the examination booklet.

- 1) A law special in form and effect cannot be validly enacted under Article IV, Section 22 of the Constitution of Illinois.
- 2) A law granting or creating a special right or cause of action not existent at common law may be repealed with the legal effect of negating accrued rights and pending actions.
- 3) An ex post facto law can never be valid under the federal constitution or the Constitution of Illinois.
- 4) A judicial interpretation of a statute by the highest court of a state precludes contrary administrative interpretation.
- 5) The counties and other political subdivisions and municipal corporations in the State of Illinois do not enjoy constitutional immunity from tort or other liability.
- 6) A civil cause of action is not presumed to derive in favor of a person injured by conduct which by statute is made a criminal offense.
- 7) Legislation authorizing the expenditure of public funds for the benefit of private persons may nevertheless be valid if the purpose of the expenditure is public.
- 8) Incorporation by reference and repeal by implication, unlike amendment by reference, are not prohibited by the Constitution of Illinois.
- 9) Retroactive legislation may validly impair existing rights in most states if the purpose of the legislation serves the public interest.
- 10) In an act non-regulatory in nature, the failure of a person to comply with statutory directions relative to registration will not generally preclude his right to recover under a contract entered into with another person in respect to a transaction related to the requirement of registration.

NOTE: ALL EXAMINATION QUESTIONS MUST BE RETURNED WITH
THE EXAMINATION BOOKLET.

FINAL EXAMINATION IN LEGISLATION (Law 331)

Second Semester 1959-1960

Professor Cohn

TIME: 4 HOURS

1. A statute of the State of Illinois establishes a public employee's annuity and benefit fund which provides retirement and disability benefits. Membership in the fund is compulsory upon all employees. The fund is financed by employee contributions and state funds. Until July 1, 1959, the provisions respecting eligibility for disability benefits read as follows:

"Any employee who because of mental or physical disability arising from any cause becomes unable to perform the duties of his assigned position for any period exceeding 60 days shall be entitled to a disability benefit; provided, that no disability benefit shall be paid to any employee who has been an employee for less than five years if the disability is the result of a mental or physical condition existing on the date the employee first became a member of the fund."

In 1958, the Illinois General Assembly, by an amendment proper in form, effective July 1, 1959, repealed the proviso clause and substituted the following proviso in lieu thereof:

"provided, no disability benefits shall be payable for any disability which begins prior to the completion of two years of service unless the disability is caused by an accident."

Adams, Baker, and Collins were employed on September 1, 1957, and on that date first became members of the fund. The physical examinations given them as required by the Annuity and Benefit Fund Act disclosed that Adams was suffering a mild degree of hypertension (high blood pressure) and that Baker and Collins were in perfect condition. On June 1, 1959, Baker suffered a heart attack and while still hospitalized on August 1, 1959, filed an application for a disability benefit. On July 25, 1959, Collins was stricken with tuberculosis, and on September 25 filed his claim for a disability benefit. On October 1, 1959, Adams suffered a cerebral hemorrhage, a direct consequence of his hypertension, and on December 1, 1959, he filed his claim for a disability benefit.

You are the attorney for the Pension Board and are requested to review the three claims and to recommend approval or disapproval. Analyze the claims and give your decision in each case.

2. In each of the following problems, state the legal issue in not more than 20 words, and discuss and give decision in not more than 100 words.

(a) Under federal law, transportation of narcotics in interstate commerce (except where authorized by special permit) is an offense punishable by a fine not in excess of \$15,000, or imprisonment in the federal penitentiary for not less than one year nor more than five years, or both. Assume that the Congress in 1960 enacts the following amendment to that law, which becomes effective on April 1, 1960:

"Any person heretofore or hereafter transporting narcotics in interstate commerce, except as authorized in this Act, shall be fined not more than \$10,000, or imprisoned in the federal penitentiary for not less than 3 years nor more than 20 years, or both."

In June 1960, X is prosecuted for a violation of the statute occurring on November 15, 1959. He is convicted and is sentenced to a term of three years, and fined \$10,000. X appeals. Assume the statute is complete and definite in all respects.

(b) A state statute provides that it is a misdemeanor punishable by a fine not in excess of \$100 for a person to leave a motor vehicle unattended on a public street with the key in the ignition or the motor running. X parked his car on a public street, leaving the key in the ignition. A few minutes later Y started the car and made off with it. In his haste to make the getaway, Y ran a red light, crashing into a car having the right-of-way and injuring P. P sues X for damages to the car and personal injuries, alleging a violation of the statute.

(c) A state statute provides that a cause of action for breach of contract shall not be maintained if instituted more than 10 years after the cause of action accrues. In 1954, P entered into a written contract with D for the sale of personal property which was delivered to D. D defaulted in the payment of the purchase price in January 1955. In 1959, the law is amended, effective July 1, 1959, reducing the period to six years, and is made applicable to causes of action accrued prior to its effective date if the time remaining to institute action under the amendment is not less than 180 days. P, unaware of the 1959 amendment, files suit against D for breach of contract in June 1961. D pleads the statute.

3. In 1944, the United States Supreme Court in United States v. Southeastern Underwriters Ass'n, 322 U.S. 533, declared the insurance business to be interstate commerce, thus raising serious doubts as to the continuing power of the states to tax and regulate the business of insurance, a power which had always been exercised theretofore by the states. In 1945, the Congress enacted the McCarran-Ferguson Act, the relevant portions of which are as follows:

"Sec. 1. The Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

"Sec. 2 (a). The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of business.

(b). No act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance; provided, that the Sherman Act, the Clayton Act, and the Federal Trade Commission Act shall be applicable to the business of insurance to the extent that such business is not regulated by State law."

A Nebraska statute reads as follows:

"No person shall engage in this State in unfair methods of competition or in unfair or deceptive practices and acts in the conduct of the business of insurance. No person domiciled or resident in or resident of this State shall engage in unfair methods of competition or in unfair or deceptive acts and practices in the conduct of the business of insurance in any other state, territory, possession, province, country or district."

The O.K. Insurance Company is a Nebraska corporation engaged in the business of selling health insurance. Licensed only in Nebraska, the Company sells no policies through agents, but from its office in Omaha, Nebraska, transacts business by mail with residents of every state. It solicits business by mailing circular letters to prospective buyers recommended by existing policyholders. All business is conducted exclusively by direct mail from the Omaha office; it is from there that policies are issued, and there that premiums are paid and claims filed.

In 1946 the Federal Trade Commission issued a regulation interpreting the McCarran-Ferguson Act. The regulation stated that it had no jurisdiction to entertain complaints of unfair or deceptive acts or practices of any insurance company domiciled or licensed in a state which by law prohibited unfair or deceptive acts or practices of the company in that state and elsewhere in the country. In 1947, the Congress re-enacted Section 2 of the McCarran-Ferguson Act, making no changes therein except to add a reference to the "Robinson-Patman Anti-Discrimination Act" to the proviso in (b). In 1951 the Federal Trade Commission, under its statutory power to promulgate rules and regulations, repealed its interpretive regulation of Section 2 and adopted a new regulation to the effect that it did have jurisdiction to entertain complaints and to issue cease and desist orders to prevent unfair or deceptive acts or practices of insurance companies beyond the borders of the states in which the companies were licensed.

In 1953, Adams, a resident of Tennessee, purchased a policy through the mail order solicitation of the O.K. Insurance Company. The circular of the O.K. Insurance Company relied upon by Adams was obviously unfair and deceptive, a fact which became abundantly clear when Adams's claim under the policy was denied. Adams filed a complaint with the Federal Trade Commission, which investigated the charge and after a hearing issued a cease and desist order prohibiting the O.K. Insurance Company from making certain statements and representations found by the Commission to be deceptive and misleading in violation of the Federal Trade Commission Act. On judicial review, the Court of Appeals set aside the order. The Supreme Court granted certiorari.

Analyze and discuss the interpretive and other issues and give decision.

4. A state statute reads as follows:

"Sec. 1. It is the public policy of this State that the public commissions, boards and councils, and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of this Act that their actions be taken openly and that their official deliberations be conducted openly.

"Sec. 2. All official meetings at which any legal action is taken by the governing bodies of the State, counties, townships, cities, villages, incorporated towns, school districts, and all other municipal corporations, boards, bureaus or commissions of this State shall be public meetings, except for deliberations for decisions of the Public Utilities Commission and the State Pardon and Parole Board, meetings where the acquisition or sale of property is being considered, and where the constitution provides that a governmental unit can hold secret meetings.

"Nothing in this section shall be construed to prevent the governing body of any agency of government from holding closed meetings to consider

information regarding employment or dismissal of an employee; provided, that no final action for employment or dismissal shall be taken at a closed meeting.

"Sec. 3. Any person violating any of the provisions of this Act shall, upon conviction, be punished by a fine of not more than \$100, or by imprisonment in the county jail for not more than 30 days, or both."

The members of the following designated agencies are prosecuted under Section 3 for violating the Act, upon the following facts, respectively:

(a) An employee files a claim against an employer for accidental injuries suffered under the Workmen's Compensation Act. Public hearings are held by a referee and before the Industrial Commission on administrative appeal from the recommendations of the referee. Upon conclusion of the public hearings, the members of the Commission meet in closed session to deliberate upon the record. They reach a decision denying the claim and notify the parties by mail.

(b) A state university whose affairs are administered by an elective board of trustees, upon charges filed by the president of the university that a faculty member has abused his academic responsibility by publishing in a student newspaper a statement endorsing premarital relations for responsible and mature students, holds a secret hearing upon such charges. If the board concurs in the charges, the faculty member may be dismissed. The decision of the board is thereafter announced in a regular public meeting as a result of deliberations held secretly following the hearing.

(c) The same board as in (b), composed of 9 members, organizes three committees of three members each, to consider and make recommendations to the full board on subjects not within the statutory exceptions to the public meeting requirement. The three committees meet separately in closed sessions and discuss and deliberate the matters fully. Each committee reaches decisions and at a following public meeting of the board, the recommendations of each committee are formally adopted by the board, with due formality, but with no discussion or deliberation.

Analyze the interpretive issues of the foregoing problems and give decision in each case.

5. Section 1-10 of the Public Assistance Code of Illinois establishes a one-year state residence requirement for eligibility for general assistance to needy persons. General assistance grants are payable from funds raised locally as implemented by state appropriations. Since World War II there have been large and continuing migrations of needy persons from southern states into the larger cities of northern states, especially New York, Ohio, Michigan, Pennsylvania, and Illinois. After establishing residence eligibility, it is alleged that many of these people become recipients of general assistance. Assume that you are a lawyer and member of the Illinois General Assembly. Representative Jones of Chicago introduces the following bill, explaining that the condition attached to the appropriation is the result of information that he has that it is the prevalent practice of southern states and local governmental units therein to encourage migration of needy residents by paying their costs of transportation to northern cities:

"A Bill

"For An Act making an additional appropriation to the Illinois Public Aid Commission for the purpose of meeting the state's general assistance obligations under the Public Assistance Code of Illinois."

/Enacting Clause (assume in proper form)_/

"Sec. 1. In addition to the other sums heretofore appropriated for such purpose, the sum of \$35,000,000 is appropriated to the Illinois Public Aid Commission for the purpose of providing general assistance grants to needy persons as provided in the Public Assistance Code of Illinois. No portion of this appropriation shall be used to pay general assistance to any person hereafter establishing a residence in this State whose costs of transportation into this State are paid in whole or in part by another state, territory, dependency or possession, or by any municipal corporation or political subdivision of such other state, territory, dependency, or possession."

Analyze and discuss the policy and legal issues suggested by this proposed legislation and on this basis, as a lawyer and legislator, how would you cast your vote?

FINAL EXAMINATION IN MORTGAGES (Law 342)

Second Semester 1958-1959

Professor Holt

TIME: 3 hours

Give reasons for your conclusions, but avoid impertinent discussions. Be coherent. Give due weight to statutes of the types considered in the course. You may make reasonable assumptions of fact, but be sure to state your assumptions clearly.

1. Pursuant to an agreement between A, B, and C, A and B purchased a tract of land from V and took a deed from V naming them (A and B) as grantees. According to the agreement between A, B, and C, C was to pay A and B one-third of the purchase price within three years and was to have a one-third interest. Three years and three months later C tendered A and B an amount equal to one-third of the purchase price and interest and demanded a deed conveying to him a one-third interest. A and B refused to comply. Rights of C?
2. M gave a lease to L of Tract X, which M owned in fee. While the lease still had six years to run, M gave a trust deed of Tract X to E to secure a loan made by E to M and evidenced by M's negotiable note, payable to the order of M and endorsed in blank. Prior to any default on the trust deed, M and L made an agreement in writing whereby in return for an immediate cash payment to M by L, M agreed to an immediate cancellation of the lease, although it still had five and a half years to run. One month after such cancellation of the lease, M defaulted on his trust deed. Rights of E?
3. M gave a first mortgage on Tracts X and Y to E. M gave to E-2 a second mortgage on Tract X and a first mortgage on Tract Z. Still later M gave E-3 a second mortgage on Tract Y. All mortgages were given to secure loans and had the same maturity date. Assuming that all parties in interest are before the court in suits to foreclose the mortgages and that the suits are consolidated for trial, discuss when and how marshalling should be applied. (It is to be assumed that all mortgages were promptly recorded.)
4. Statutes of State X provide that "every conveyance of real estate within this state...which shall not be recorded as provided by law shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate or any portion thereof whose conveyance shall first be duly recorded." The statutes further provide that "the term 'conveyance' shall be construed to embrace every instrument in writing by which any estate or interest in real estate is created, alienated, mortgaged or assigned or by which the title to any real estate may be affected in law or equity; and the term 'purchaser' shall be construed to embrace...every assignee of a mortgage..."

M mortgaged Tract 1 in State X to E to secure his negotiable note, and the mortgage was promptly recorded. Before maturity of the note E indorsed the same to A for value and also assigned to A in writing the mortgage, but such assignment was never recorded. Later M conveyed his interest in the land to E by deed that was promptly recorded, and E conveyed in fee to P, a bona fide purchaser. Rights of P and A?

5. In 1934, in return for a loan of \$4000 by E to M, M gave E his negotiable promissory note due July 1, 1936, payable to his own order and indorsed in blank, secured by a trust deed to E of Tract X, which trust deed was duly recorded. In 1935 M conveyed to B, who assumed payment of the encumbrance. Later in 1935 B conveyed to G, who also assumed payment of the encumbrance. G paid interest on the note down to 1955, and then by writing agreed with E not to plead the ten-year statute of limitations on the note and to pay the same in full if he should be able to sell Tract X. In 1958 G sold Tract X to P by warranty deed for \$25,000. P filed a bill to have the trust deed declared a cloud on title. E filed a cross-bill to foreclose. (E has never negotiated the \$4000 note.) Result?

6. M conveyed Tract X to B, who assumed and agreed to pay a mortgage on the same which M had given to E to secure M's negotiable note. B in turn conveyed the tract to G, who also assumed and agreed to pay off the mortgage. At maturity of the note, for a valuable consideration, E granted to G an extension of time without the knowledge or consent of either M or B. G failed to pay at the end of the extension period, and on foreclosure Tract X was sold for less than the amount of the mortgage debt. All deeds and mortgages were promptly recorded. Discuss the rights and liabilities of the parties.

7. A statute of State X provides that "the recording of an assignment of a mortgage shall not, in itself, be deemed notice to the mortgagor, or his heirs or personal representatives, so as to invalidate any payment by them, or either of them, to the mortgagee." M gave his negotiable note to E in return for a loan secured by a mortgage. Before maturity E indorsed and transferred the note to P, a bona fide purchaser for value, together with a written assignment of the mortgage. Later, but before maturity of the note, M paid E the full amount of the note, without demanding production of the note or mortgage deed, and E gave M a satisfaction-piece acknowledging payment in full. At maturity of the note P consults you as to his rights. What advice?

FINAL EXAMINATION IN MORTGAGES (Law 342)

Second Semester 1959-1960

Professor Holt

Time: 3 Hours

Give reasons for your conclusions. Pay due consideration to statutes of the types considered in the course. Any reasonable assumptions of fact should be clearly stated. Expect no credit for rambling and impertinent dissertations.

1. By statute in State X every conveyance of real estate by deed, mortgage or otherwise is to be recorded, and every conveyance not so recorded is void as against any subsequent purchaser in good faith and for value. E, mortgagee of a mortgage given by M to secure his negotiable promissory note for a loan of \$5400, before maturity sold the note and mortgage to P by indorsing the note in blank, executing on the back of it an assignment of the mortgage, and delivering the note and mortgage to P. No assignment of the mortgage was ever recorded, but the mortgage had been duly recorded on the day of its execution. After M had defaulted at maturity, E caused foreclosure proceedings to be instituted by advertisement. He purchased at foreclosure sale, recorded the sheriff's certificate of purchase, and after the expiration of the period of redemption from foreclosure sold to B, who relied upon E's record title. (It is to be assumed that E had wrongfully foreclosed without P's knowledge or consent, but the foreclosure sale was not without legal effect; in State X, E would hold on constructive trust for P.) B gave E a purchase-money mortgage for a part of the price, which was duly recorded. E assigned this purchase-money mortgage for value to G, who recorded a formal written assignment. P seeks your advice as to a suit to set aside the foreclosure of the original mortgage, the later deeds, the B mortgage, and the assignment thereof to G, and then for the foreclosure of the mortgage assigned to him (P). What advice as to the rights and liabilities of the parties?

2. M mortgaged a house and lot to E to secure a loan. Later M mortgaged the same house and lot to E-2 to secure a second loan. Both mortgages were duly and promptly recorded. M remained in possession and sold the furnace in the house to B for cash. B removed the furnace. E-2 consults you as to his rights. What advice?

3. In State X land was mortgaged by M to E to secure a loan. On M's default there was a foreclosure, and at sale on foreclosure E purchased and received from the sheriff who made the sale a certificate of purchase. One week before the expiration of the period afforded M for redemption, M borrowed from L the amount needed for such redemption and, having made redemption, delivered to L his promissory note for the amount advanced, due one year after date. At the same time M gave L a writing signed by M which stated that L had made the loan in order to enable M to redeem; that as security for repayment of the advance by L, M had deposited with T in escrow a deed from M to L to be held until payment of the debt; and in the event of M's failure to pay the debt at maturity, the deed was to be delivered to L. Such a deed was executed and delivered in escrow to T. When the note to L was not paid at maturity, T delivered the deed to L. One week later M tendered L the amount of the note and accrued interest and demanded a return of the deed from M to L, but was refused. M's rights?

4. M mortgaged Lots 1, 2 and 3 to E. Later M gave a second mortgage on Lots 1 and 2 to E. Still later M gave a third mortgage on Lots 2 and 3 to E-2. All mortgages were duly recorded. On foreclosure of the second mortgage there was a foreclosure sale, and B was the purchaser, subject to the first mortgage. No attempt to redeem was made by anybody during the redemption period. E filed a bill to foreclose the first mortgage. B and E-2 were made parties to the proceeding. Discuss the rights of the parties.

5. M mortgaged 1000 acres to E. M then sold the 1000 acres to A subject to the mortgage. A conveyed 250 acres of the tract to B, who did assume payment of the mortgage debt. B later conveyed the 250 acres to C, who also assumed payment of the mortgage debt. A conveyed the remaining 750 acres to D, warranted title against the mortgage, and took a junior purchase-money mortgage for the purchase price. C failed to pay the assumed debt, and E foreclosed and caused the land to be sold on foreclosure sale to X. A thereby became liable on his warranty to D and lost the value of his junior mortgage. Rights of A?

6. M mortgaged a tract of land in Illinois to E. The mortgage was foreclosed in May 1949, and at a foreclosure sale on June 17, 1949, E purchased and received a certificate of purchase. E obtained deficiency judgment against M on June 25, 1949. In March 1950 M conveyed all interest in the premises to G, who redeemed in April 1950 and received a certificate of redemption. In May 1951 the premises were sold on execution issued on the deficiency decree that E had obtained against M on June 25, 1949. E purchased at the execution sale. G was in possession of the premises. E sued G in ejectment. What disposition?

7. In 1911 M mortgaged a tract of land in Illinois to E to secure M's negotiable promissory note due August 1, 1912. The mortgage was promptly recorded on the date of its execution and delivery, July 31, 1911. January 2, 1916, the note and mortgage were assigned to A. Interest was paid regularly semi-annually until July 1, 1943, when A surrendered the note of M due August 1, 1912, in return for the following instrument delivered by M:

"July 1, 1943

"\$5,000.

Twelve months after date for value received I promise to pay to the order of A the sum of five thousand dollars, with interest thereon at the rate 7%, per annum, payable annually. This note is secured by a real estate mortgage of July 31, 1911, on . . ."

and then followed a brief description of the land by quarter-section, township, and range, and the instrument was signed by M. M failed to pay the instrument at maturity on July 1, 1944. Rights of A?

(In answering assume that nothing was ever filed for record to provide for the renewal or extension of the instrument of mortgage of 1911.)

FINAL EXAMINATION IN MUNICIPAL CORPORATIONS (LAW 340)

Second Semester 1958-1959

Professor Kneier

1. Plaintiffs seek an injunction against enforcement of an ordinance of the city of R relative to the use of certain streets on which they are abutting owners and tenants. The city had by ordinance carried out an agreement with the state as to widening and paving the street (a state highway) which contained the following provisions:

- "(a) That it (the city) will not permit parking in, along, or upon said street or highway except as permitted by written authorization from the State Highway Department.
- "(b) That no advertising signs, or signboards, or devices will be permitted within the right of way of said street or highway, and that no directional, minimum speed or traffic control signs will be placed in said right of way by the city without written approval from the State Highway Department.
- "(c) That on said street the city will regulate and control automobile parking lots, where eight or more motor vehicles are kept or stored at any one time for a consideration, so that neither the owner of such parking lot or his agents or employees shall drive, park, stand, stop or store any vehicle parked or stored in any such parking lot on, upon or across any public street, public sidewalk, public alley or other public place, or drive or move any vehicle parked or stored in any automobile parking lot, except within the property lines of such automobile parking lot."

Your decision with reasons.

2. Plaintiff, a gas company, located its lines in defendant city with the consent of the city, and in county highways pursuant to a county franchise. Defendant city in carrying out a sewer outlet construction in an unincorporated area of the county made it necessary for plaintiff to relocate some of its pipes in the county highways. Plaintiff seeks to recover from the city the expenses incurred in relocating its pipes.

Your decision with reasons.

3. A zoning ordinance prohibits the operation of automobile parking lots in areas zoned for residences, and defines a parking lot as a lot, whether open or covered, in which eight or more motor vehicles are kept at any one time for a consideration. The ordinance made violations punishable by fine or imprisonment, or both. M was tried in county court for operating a parking lot in violation of the ordinance, and was acquitted on the ground that the ordinance did not forbid the parking lot operation in which he was engaged. The city appealed and the appellate court reversed on the same legal question. A petition for rehearing on the ground that the county court judgment was an acquittal on a criminal charge and, thus, not appealable, was denied.

On appeal to the Supreme Court of the state, what decision? Reasons.

4. Action to enjoin city officials of the city of X from changing the city boundaries on the ground that the statute under which such action is taken is unconstitutional. The act is applicable to all cities in the state in which the council, after public hearing, decides that there is danger of racial conflict

unless certain areas or sections now within the city are excluded by a change in boundaries. Upon adoption of the act as provided above, the council is given power by the act to exclude by ordinance such areas or sections as it sees fit. Before the action excluding such areas was taken by the council of the city of X, there were 400 qualified Negro voters in the city; after the action was taken there were only five qualified Negro voters. Before the exclusion there were 600 qualified white voters; after the exclusion the number of qualified white voters remained the same. The state constitution prohibits special legislation granting power to cities.

Should the injunction be granted? Reasons.

5. Action for damages for personal injuries and damages to the automobile of plaintiff brought against the city of T, a municipal corporation, and W, an employee of the city of T. Plaintiff's injuries and the damages to his automobile were caused by defendant W while driving a garbage truck belonging to the city of T out of a driveway in order to go to a wash rack 300 yards distant from the lot. W made a left turn contrary to municipal ordinance and his negligence was the cause of the accident. The truck involved had completed the work for the day and had been taken to a storage lot maintained by the Refuse Department some 300 yards from the wash rack. In this storage lot drivers left their trucks, and W, a truck washer, took them to the wash rack and washed them inside and out. The wash rack was used also for washing other cars belonging to the city but they were under the supervision of the Superintendent of the Refuse Department.

The trial court overruled the motion of each defendant for a directed verdict. The city and W appeal from a verdict for the plaintiff. Your decision with reasons.

TIME: Three Hours

1. Action against the City of C for the amount of a reward offered by its council for the apprehension and conviction of incendiaries. In this state, which is not a home-rule state, there are no statutes specifically authorizing municipal corporations to offer a reward for the detection, apprehension, or conviction of offenses against the criminal laws of the state. The statutes do provide that municipal corporations may "pass and enforce all necessary police ordinances" and "to do all such things as it may deem proper for the prosperity, quiet and good order of the city." A statute provides that a "majority vote of the members of the council elected" is necessary for any action to be taken. The council was composed of fourteen members but when the action offering the reward was taken, there was one vacancy. The vote on offering the reward was seven in favor and six opposed; the mayor declared the resolution offering the reward was passed.

Your decision with reasons.

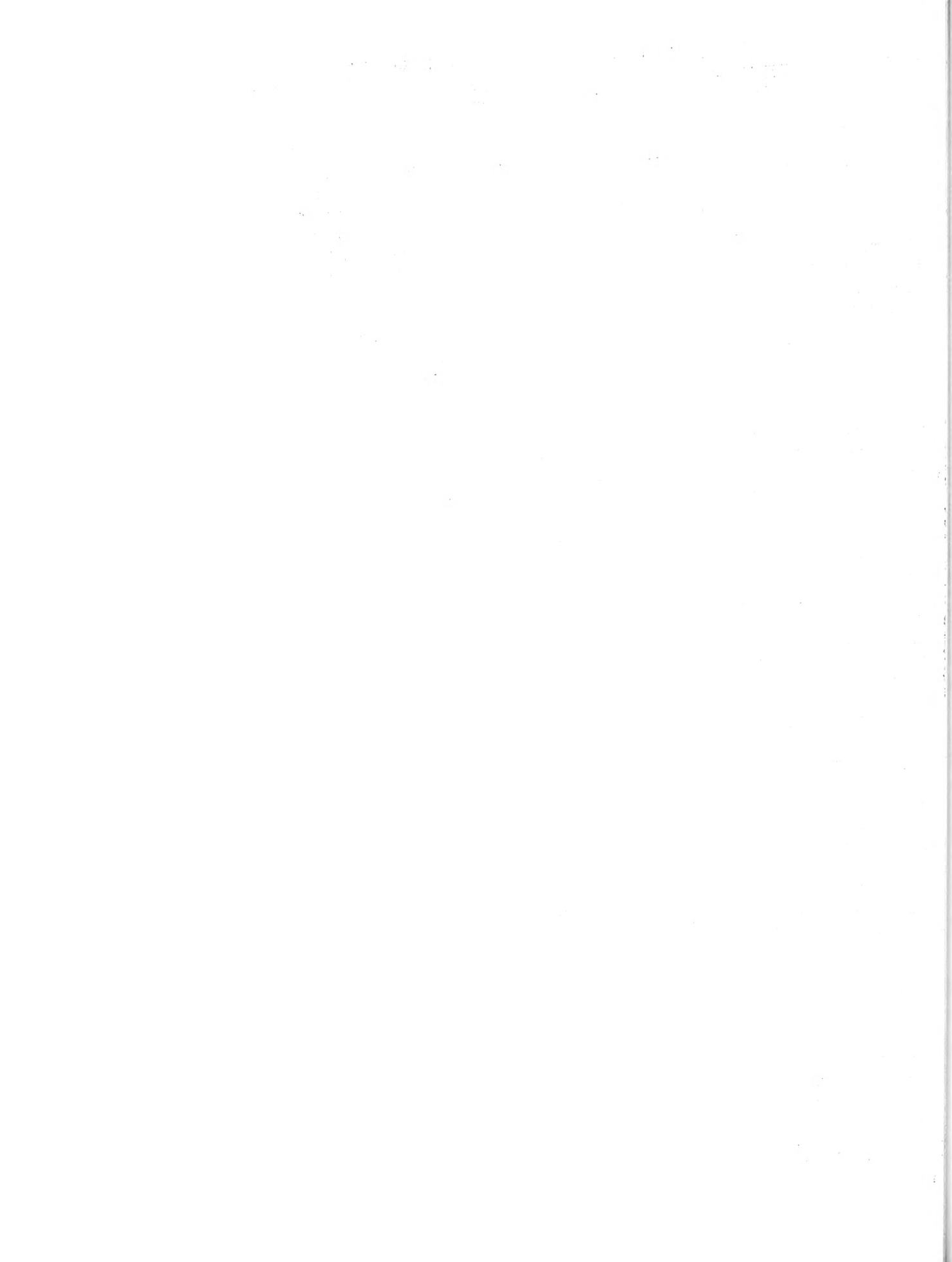
2. Action by plaintiff, who owns property abutting on a street, to enjoin the defendant from operating a newsstand on the sidewalk in front of plaintiff's property for the sale of newspapers, magazines, pocket books, and comic books. The street was originally dedicated to public use in 1854 by deed of dedication, and in 1901 it was widened as a result of condemnation proceedings. Defendant's newsstand is located partly on the land which was acquired by deed of dedication and partly on that part of the street acquired by condemnation. No action has been taken by the city relative to newsstands on the streets but the custom of having them has existed for over eighty years. The defendant started his newsstand at the location in dispute in 1932 while he was a child and sold from a small wagon. In 1944 he built a newsstand four feet long, five feet high, and twenty-four inches wide. It was gradually expanded to its present size of nine feet long and six feet high. Plaintiff acquired the property in front of which the newsstand is located in 1948 for \$100,000 and has spent approximately \$250,000 in remodeling. He operates a clothing store for men.

Your decision with reasons.

3. An amendatory zoning ordinance was enacted by the city council of C for the purpose of changing the zoning of an area from single family residential to an apartment district. The amendment received the required affirmative votes of five members of the council, including the vote of one councilman who owned land in the area affected by the amendment which would increase in value \$200,000 because of the zoning change. Plaintiffs, owners of property in the zone near that of the member of the council, filed suit to have the amendatory ordinance declared invalid and to enjoin its enforcement.

Your decision with reasons.

4. Action by plaintiff, superintendent of schools, against defendant, a school district, for breach of a contract of employment. The plaintiff had been employed first in 1945 on a two-year contract, and then on a three-year contract. In April 1950 the parties entered into a new contract for one year, to take effect July 1, 1950, at the end of the then existing three-year contract. On July 5, 1950, the new one-year contract having been in operation five days, at a special meeting of the board of education, at which all members were present, a resolution was passed by a vote of three for and two against, hiring the plaintiff for three



years beginning July 1, 1950. The contract was duly executed the following day, July 6, 1950. At the school election on July 11, 1950, two new members of the board were elected, replacing two members who were defeated. On July 12, 1950, the board organized for the ensuing year, and by majority vote asked the plaintiff to resign. He refused and on July 15, 1950, sent a written communication to the board, tendering his services under the contract of July 6. In reply, and in writing, the board informed the plaintiff on July 21, 1950, that his services as superintendent were at an end, and directed him to deliver up to the secretary of the board his keys and other school property.

Plaintiff remained ready and willing to perform his contract, and at the end of five months brought this action. Your decision with reasons.

5. This is a proceeding to determine the validity of bonds proposed to be issued in order to finance the acquisition of off-street parking facilities in a city which has reached the constitutional debt limit. The bonds, which are payable "solely from the net operating earnings of the proposed parking facilities", provide for a conveyance in trust to a private trustee of the facilities proposed to be acquired as further security for the bondholders. Action was taken by the city under a state law authorizing the issuance of revenue bonds for the acquisition of off-street parking lots by cities having a population of not less than 25,000 and not over 500,000. The council action to proceed with the acquisition of off-street parking facilities as provided in the statute was five to four. One of the councilmen is the brother of the operator of a downtown department store who is interested in having more parking facilities in the central section of the city.

Assume Illinois constitutional provisions are applicable. Are the proposed bonds valid? Your decision with reasons.

TIME: 4 HOURS

Instructions: Please do not write your name on the examination booklet. Please give some thought to your English usage in writing this paper. Leave a space between paragraphs, and maintain reasonable margins. Make your handwriting legible.

1. State A enacted the following statute in 1945:

"The production of natural gas in State A in such manner and under such conditions and for such purposes as to constitute waste is hereby prohibited.

"The term 'waste' as herein used, in addition to its ordinary meaning, shall include economic waste, underground waste and surface waste. Economic waste as used in this act, shall mean the use of natural gas in any manner or process except for efficient light, fuel, carbon black manufacturing and repressuring, or for chemical or other processes by which such gas is efficiently converted into a solid or a liquid substance. The term 'common source of supply' wherever used in this act, shall include that portion lying within this state of any gas reservoir lying partly within and partly without this state. The term 'commission' as used herein shall mean the state corporation commission of the state of A, its successors, or such other commission or board as may hereafter be vested with jurisdiction over the subject matter of this act.

"Whenever the available production of natural gas from any common source of supply is in excess of the market demands for such gas from such common source of supply, or whenever the market demands for natural gas from any common source of supply can be fulfilled only by the production of natural gas therefrom under conditions constituting waste as herein defined, or whenever the commission finds and determines that the orderly development of, and production of natural gas from, any common source of supply requires the exercise of its jurisdiction, then any person, firm or corporation having the right to produce natural gas therefrom, may produce only such portion of all the natural gas that may be currently produced without waste and to satisfy the market demands, as will permit each developed lease to ultimately produce approximately the amount of gas underlying such developed lease and currently produce proportionately with other developed leases in said common source of supply without uncompensated cognizable drainage between separately-owned, developed leases or parts thereof. The commission shall so regulate the taking of natural gas from any and all such common sources of supply within the state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation and to prevent unreasonable discrimination in favor of or against any producer in any such common source of supply. * * *

"The commission shall promulgate such rules and regulations, as may be necessary for the prevention of waste as defined by this act, the protection of all water, oil or gas-bearing strata encountered in any well drilled in such common source of supply, ascertaining the several factors entering into the determination of the productive capacity of each well, the total productive capacity of all wells in the common source of supply, the establishment of such other standard or standards

as the commission may find proper to determine the productive capacity of each well and of all wells in such common source of supply, and as the commission may find necessary and proper to carry out the spirit and purpose of this act: * * *."

In 1948 the royalty owners in the huge Griffith field in State A filed a petition with the Conservation Commission setting forth in great detail facts which may be summarized as follows: The Griffith field is one of the largest gas producing fields in the world; supply from the field was greatly in excess of the capacity of the pipe lines transporting gas from the field; many producers had not been able to market their gas through any of the existing pipe lines; prices being paid to producers varied from four to eight cents per thousand cubic feet; and producers, in effect, had to accept what pipe line companies offered to pay for the gas.

After due notice and hearing, the Commission decided that the fair and reasonable value of natural gas at the wellhead in the Griffith field was at least eight cents per thousand cubic feet, and the taking of gas out of the field at a lower price was not conducive to the fulfillment of the purposes of the statute relating to the conservation of gas and should be prohibited. Therefore, the Commission ordered that the minimum wellhead price of gas be eight cents and that all purchasers and takers of gas must take ratably from each well in the field.

(a) Is it within the power of the Commission to promulgate this order? Explain.

(b) Does this order further the aims and objectives of conservation as you understand them? Explain.

(c) Discuss briefly what alternative solutions to this problem the legislature and/or the conservation agency might have adopted.

2. (a) In 1920 X purported to convey all her mineral interest in a certain tract to A. In 1921 A leased the premises for oil and gas to L, and the lease was duly recorded. A extended the lease several times; finally, in 1936 L drilled a producing well which has continued to produce in paying quantities. In 1942 it was discovered that in 1919 X had conveyed half of her mineral interest to Y and that the conveyance was duly recorded. A claims that he is entitled to all the royalties from the well and brings suit to enforce his claim. Should he win? Explain. You may assume that the relevant statute of limitations in this jurisdiction is twenty years. Y asserted no claim to the minerals from 1919 to 1942.

(b) In 1920 Parsons went into adverse possession of a tract of land. In 1930 he sold the surface of the land to Baker and reserved the minerals. Baker has remained in possession of the surface until the present, but Parsons has never conducted operations on the land to recover any of the minerals. The land had previously belonged to Stables. Who owns the minerals today? Explain. You may assume that the relevant statute of limitations in this jurisdiction is twenty years.

3. Magee held leases on tracts A and B. Each lease had a primary term of one year with the usual "thereafter" clause and "unless" drilling clause. Shortly after the lease on tract A was executed, Magee assigned it to Roe, reserving a 1/16th overriding royalty. At the time of the assignment, Roe and Magee entered into a written agreement wherein Roe undertook to drill a well on tract A to the Bartlesville sand within six months. The well was drilled within this period and was a producer.

A month after the above-mentioned assignment, Magee assigned the lease on tract B to Roe, the only consideration being the reservation of a 1/16th overriding interest by Magee. At the end of the primary term of the lease on tract B, Roe had neither drilled nor paid delay rental. After filing for record a release of the original lease on tract B, Roe obtained a new lease on the tract from the owner and drilled a producing well thereon. The new lease made no mention of any overriding interest in favor of Magee.

Magee brought an action to have his overriding interest recognized by Roe as a charge on the second lease on tract B. On trial Magee introduced testimony of some rather vague oral statements by Roe to the effect that Roe promised to drill on tract B within the one-year term of the lease. Roe denied making any statements at all. The trial court held for defendant Roe.

(a) If this case were appealed, what disposition should be made by the appellate court? Why?

(b) Would your result in (a) be the same or different had there been a clause in the assignment agreement requiring Roe to give Magee notice before releasing the lease on tract B, assuming that no notice was given? Why?

(c) Would your result in (a) be the same or different had there been a clause in the assignment agreement giving Magee an overriding interest in any "modifications, extensions, or renewals" of the original lease on tract B? Why?

(d) Draft a clause that will clearly protect Magee against the risk of having his overriding interest "washed out."

4. Feezor leased a 640-acre tract of land to Sell. A standard oil and gas lease form was executed providing for a primary term of five years, an "unless" drilling clause, and the usual one-year exploratory period. The cash bonus for the lease was \$640, and the delay rentals were \$1 per acre. Three hundred feet southwest of the southwest quarter of the tract, a producing well was drilled which was draining some oil from Feezor's land. This well was completed three years after Feezor and Sell entered into their lease.

(a) Assume that in the first year of the lease Sell drilled a producing well on the northeast quarter of the lease. This well promised to produce enough in a few years to repay the cost of drilling and equipping it, as well as to show a profit over and above the cost of operating it. For about a year before suit was brought, Feezor demanded that Sell must drill another well, but Sell has refused. Has Sell violated any of Feezor's rights? If so, what remedies may Feezor employ against Sell, and what must Feezor prove to recover on these remedies? You may assume that Feezor's suit was brought four and one-half years after the date of the lease. Please answer this question as you think the courts of Illinois, Texas, and Oklahoma would answer it.

(b) Assume that Sell had not drilled a well but had paid the delay rentals at the proper times. Has Sell violated any of Feezor's rights by refusing to drill after Feezor repeatedly demanded a well? If so, what is Feezor's remedy and what must he prove to recover? Answer assuming that Feezor brought suit: (i) two and one-half years after entering into the lease; (ii) three and one-half years after entering into the lease; and (iii) four and one-half years after entering into the lease. If the law of the three jurisdictions mentioned in part (a) varies on these points, indicate the differences in their views.

(c) Would it make any difference in your answers to parts (a) and (b) if Sell were the lessee who drilled the well southwest of the tract in question?



5. (a) Draft an instrument granting to X a one-eighth mineral fee interest in tract A. Tract A is presently subject to a valid oil and gas lease. Exactly what interest, if any, does X take in any royalties, rentals, or bonuses payable under the present or future leases? Must he join in any future leasing?

(b) Draft an instrument granting to X a one-sixteenth perpetual non-participating royalty interest in tract B. Tract B is presently subject to a valid oil and gas lease. Exactly what interest, if any, does X take in any royalties, rentals, or bonuses payable under the present or future leases? Must he join in any future leasing?

MIDSEMESTER EXAMINATION IN PERSONS (Law 333)

October 27, 1958

Professor Carlsten

IMPORTANT: You will find a number in the upper right-hand corner of this page. This will be your examination number. Grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination booklet. Answer questions on the basis of Illinois law; this means the statutory and common law which would be applied by the Illinois courts.

1. "Jimmy the Con" was a confidence man. He established himself in a small town under the fictional name of J. R. Morgan and let it be known that he was interested in making investments. He drove an impressive car which was in fact purchased by him as a used car on time payments. He opened an office under the name of Morgan Investment Company. He wooed and married the town banker's daughter when she was age 15. Two years after her marriage, she discovered that he was a criminal, when the F.B.I. found him and removed him to Leavenworth Prison to complete a prison term of which he had three years yet to serve. State her possible courses of action, the grounds therefor, and the degree to which such grounds are well founded.

2. An Illinois boy was drafted and sent to a foreign country. In conformity with its laws, he there married by proxy a girl who was an Iowa resident. Discuss the validity of their marriage.

3. A boy discovered that the girl he had previously promised to marry had been a "stripper" in a night club and was a drug addict. May he lawfully break his promise to marry on these grounds?

owned a car. W procured a divorce for H's cruelty. At that time H and W entered into an agreement whereby H conveyed his interest in the home to W, W conveyed her interest in the business to H, and H agreed to pay W \$100 a month until both children reached majority.

W thereafter began a real estate agency of her own, but this was unsuccessful. In 1958 she was unemployed and had savings of \$10,000 and a car. She consults you as to whether she has any remedies against H. What is your advice and why? Would your answer be any different if the above agreement had been incorporated in the divorce decree? Would it be any different if it had been so incorporated and the \$100 monthly payments had been designated as "alimony"?

If W had married before the children reached majority, would she be entitled to continue to receive the \$100 monthly payments?

FINAL EXAMINATION IN PERSONS (Law 333)

First Semester 1958-1959

Professor Carlsten

TIME ALLOWED: TWO HOURS

IMPORTANT: You will find a number in the upper right-hand corner of this page. This will be your examination number. Grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination booklet.

Answer questions on the basis of Illinois law; this means the statutory and common law which would be applied by the Illinois courts. If the majority view of the common law is different, so indicate. Always state reasons.

(25 points) 1. H dated W for three years, seeing her regularly at least once a week. She was invited to his home and he to hers by their respective families from time to time. He wrote her letters in which he used words of affection and spoke of the time when they would always be together. She claimed he promised to marry her but he denied it. She claimed that in reliance on his promise, she had sexual intercourse with him as a result of which a child was born, which she has since had to support at a cost of \$4,000. Her medical and hospital bills, including loss of earnings while bearing the child and recovering her health after birth, were \$2,000. The value of the living which he would have provided her for her lifetime, had he married her, was estimated at \$100,000.

W consults you as to her rights against H, who has since married another. What is your advice and why?

(20 points) 2. (a) H agreed in writing to give W \$1,000 if she married him. She did so but H refused to perform his promise. W left him and H obtained a divorce for desertion. May W then recover \$1,000 from H?

(b) H maliciously set fire to a building owned by W, his wife. What actions may be brought against him on account thereof?

(25 points) 3. H accused W, his wife, of committing adultery on November 1, 1956. She admitted the act and H left home. The following May they discussed the matter and H returned home to her. W, however, refused to have sexual relations with H and H left her again in June 1957. In July 1958 H brought an action for divorce against W alleging the adultery of November 1, 1956, as grounds. W filed a counter claim for divorce on grounds of desertion. On the above facts, what disposition should be made of the case?

(30 points) 4. H married W in 1940. Each was a skilled real estate salesman. They jointly carried on a real estate agency as a partnership under the name of Brown Associates. By written partnership agreement, H drew down 50% of the profits and W the other 50%. Two children were born. W still continued in the business but only on a part-time basis. From 1940 to 1950 she still continued to receive 50% of the profits, which she banked or invested in her own name. During this period H supported the family.

In 1950 H and W jointly owned their house, worth \$30,000. H had savings of \$3,000 and owned a car. W had savings and investments of \$35,000 and also

FINAL EXAMINATION IN PERSONS (Law 333)

Summer Session 1959

Professor Carlston

TIME ALLOWED: THREE HOURS

IMPORTANT: You will find a number in the upper right-hand corner of this page. This will be your examination number. Grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on this list. Do not write your name on either this question sheet or the examination booklet.

Answer questions on the basis of Illinois law; this means the statutory and common law which would be applied by the Illinois courts. If the majority view of the common law is different, so indicate. Always state reasons. Do not assume any facts without the professor's permission.

1. (a) A and B, 23 and 21 years of age, respectively, decided to get married during a beer party. B left her husband the next day and sued for annulment. She testified that she was drunk, that she would never have married A unless she was drunk, and that she remembered the marriage ceremony and all events of that day. A member of the party testified that he saw A "spike", i.e., render unusually potent, B's drink. Is she entitled to annulment? Would A be entitled to annulment?

(b) B told A that she was pregnant with his child. B's father later told A he would beat him up unless he married B, but B was not then present. A married B. A afterwards learned that B had been unchaste with others and the child was not his. Is A entitled to annulment?

2. (a) In above case, 1(b), assume that B denied the allegations of A's complaint and testified that A had given her no aid and that she needed funds for the support of herself and her child and also for the defense of the suit against her. Is she entitled to an award of such funds?

(b) In above case, 1(b), assume that A left B as soon as he discovered that the child was not his and remained away over one year. A then sued B for annulment and B counterclaimed with suit for divorce on grounds of desertion. What result?

(c) Would creditors who had supplied food to B and her child be able to recover the value thereof from A in situations (a) and (b) above? If so, on what basis or bases of liability?

3. A married B, knowing that she had been previously married. He was under the belief that she (B) had been divorced. After A's marriage to B, her first husband obtained a divorce on grounds of B's adultery with A. A had been mistaken in his belief as to her legal freedom to marry him. A continued to live with B for three weeks and then left her. Is he entitled to either annulment or divorce?

4. B agreed to marry A in consideration of his written promise to will all his property to her upon his death. After their marriage B committed adultery with C. A knew of this and still continued to live with B. B thereafter began to drink and occasionally stayed away from home as much as a week at a time. A would receive hotel bills charged by her during her absence and would pay them. When B was away on one of her trips, A consulted his attorney as to what steps he should take and what remedies were available to him in the light of these facts, and as to their effect upon his obligation to will his property to her. He also asked whether he was liable for the hotel bills. What advice should the attorney give?

5. (a) A had treated his wife, B, with extreme and repeated cruelty. B left A and they entered into a separation agreement providing for payment by A to her of \$50 a week for her support, representing one-fourth of A's salary of \$200 per week. B was then pregnant and later had a child, after which B sued A for divorce and requested an award of alimony of \$75 per week. Is she entitled to the alimony as requested?

Suppose she had instead sued for separate maintenance. Is this remedy available to her?

(b) After C gave D cause for divorce, they separated and entered into an agreement providing that C gave D all his real property and all his personal property in excess of \$5,000, which C retained, thereby resulting in a transfer to D of property having a total worth of \$25,000. D then sued C for divorce and was awarded a decree in her favor, in which, pursuant to the consent of the parties, the above agreement was incorporated. C's income thereafter increased from \$200, as of the time of the divorce, to the sum of \$500 a week and the cost of living increased by 10%. D filed a petition to modify the decree so as to award her weekly support of \$125. Does she have a good case?

FINAL EXAMINATION IN PLEADING (Law 325)

First Semester 1958-1959

Professor Cleary

INSTRUCTIONS

1. The examination will begin with the 1 o'clock bell and will end with the 5 o'clock bell. Do not read the questions before the 1 o'clock bell, and do not write after the 5 o'clock bell.
2. Do not write over one page, normal sized writing, in the examination book on each question.
3. There are seven questions.
4. Write only your name on the first page of the examination book. Begin answers on second page.

1. A truck owned by M and driven by S was in a collision with a car driven by D. S brought a personal injury action against D, alleging negligence, and recovered. M then brought a negligence action against D for damages to the truck. Discuss the effect upon the second action of the judgment in the first action.
2. D Corporation issued 1000 bonds of \$1000 each, due at the rate of 100 bonds per year for 10 years. The bonds provided that upon failure to pay any bond, the holder of any other bond might elect to declare his bond then due also, although the date of maturity had not yet arrived. P-1 held a bond maturing the first year, which the corporation refused to pay. P-1 then sued, on behalf of himself and all other bondholders, for the total amount of all bonds. D Corporation filed an answer alleging that the bonds were not authorized by its directors. P-1 demurred. The demurrer was overruled. P-1 elected not to plead further, and judgment was entered for D Corporation. The following year P-2 sues D Corporation, alleging that he is the holder of a bond due in the second year. D Corporation in its answer pleads the former judgment. P-2 demurs to the answer. What ruling and why?
3. P left his car in D's garage to be repaired. During the night, the garage and car were destroyed by fire. Should P have the burden of proving that the fire was caused by D's negligence, or should D have the burden of proving that the fire was not due to his own negligence?
4. A statute of Illinois provides: "If a dog, without provocation, attacks or injures any person who is peacefully conducting himself in any place where he may lawfully be, the owner of the dog is liable in damages to the person so attacked or injured to the full amount of the injury sustained." D is sued because his dog bit a two-year-old plaintiff. Who should have the burden of proving provocation or non-provocation?
5. In an automobile collision case, P seeks discovery from D of the following items:
 - (a) A photograph of the wrecked cars made shortly after the collision by a newspaper photographer;
 - (b) A copy of a report of the collision made by D to the insurance company insuring his car against damage;
 - (c) A list of persons witnessing the collision.D objects in each instance. What ruling and why?
6. In a jurisdiction in which contributory negligence is an affirmative defense, P's complaint alleges that he was crossing the street, that D was driving his car and negligently failed to yield the right of way, and that P was injured as a proximate result of D's negligence. D, as permitted under local rules, filed a general denial.

At the trial, D offered the following items of evidence:

 - (a) P ran out in front of D's car;
 - (b) P was struck by a car driven by X;
 - (c) P had executed a release of his claim.P objects to the evidence in each instance. What ruling and why?
7. P sues D for damages from an automobile collision. Claiming that X, who was driving another car, was responsible for the injury to P and also for damage to D's car, D seeks to add X as a party and to file a counterclaim or third-party complaint against him. P objects. What ruling and why?

FINAL EXAMINATION IN PLEADING (Law 325)

First Semester 1959-1960

Professor Fraser

Time Allowed: 3 1/2 Hours

Instructions

Answer all questions on the basis of Illinois law unless otherwise indicated. Give reasons for your answers.

1. Plaintiff brought an action against the defendant on a negotiable instrument. The complaint contains the necessary allegations for such an action, and a copy of the note is attached. How should the defendant plead if he wishes to show that:

- a) Another suit on the same claim is pending between the parties to this action;
- b) The instrument is forged;
- c) There is no consideration for the instrument;
- d) Defendant was fraudulently induced to sign the instrument.

Explain why each pleading should be used. If the defendant has a choice of pleadings, so indicate. Discuss each part of this question separately.

2. Do any of the defendant's pleadings in Question 1 require a reply by the plaintiff? Discuss each part of Question 1 separately.

3. Explain the following terms, and illustrate, if possible:

- a) Argumentative denial
- b) Recital
- c) Departure
- d) Aider by verdict
- e) Speaking demurrer or motion

4. Paul, an employee of the Acme Manufacturing Company, was driving one of its vehicles when it collided with an automobile which was owned and was being driven by Dave. Paul sued Dave for damages for personal injuries.

a) Dave asserts that he was not negligent, but that the collision was caused by the negligence of Paul so that Acme is liable for the damage to Dave's automobile. May Dave make Acme a party to the action? Discuss.

b) Assume that Dave does not try to make Acme a party to the action. May Acme intervene in order to recover for the damage to its vehicle? Discuss.

5. In a personal injury case plaintiff seeks discovery from the defendant of the following:

- a) Names of witnesses to the accident
- b) Names of the mechanics who checked the brakes on defendant's vehicle after the collision
- c) Photographs of the scene of the accident taken by a newspaper photographer
- d) A statement given by plaintiff after the accident to a claim adjuster working for defendant's liability insurer

Discuss the right to discovery in each case.

Would the result be different if the action were brought in a federal court? Discuss.

6. Paul brought an action against the David Corporation for injuries which he received in an automobile accident. Paul alleged facts to show that he was injured as a result of the negligence of Able on January 1, 1960, that Able was the agent and employee of the David Corporation, and that Paul had exercised due care for his own safety. He also alleged his damages. Therefore, he asked for judgment against the David Corporation. Assume that the complaint is sufficient.

The David Corporation filed an answer which consisted of a specific denial that Able was the agent of the defendant corporation, and a plea of contributory negligence on the part of Paul.

The defendant, the David Corporation, then filed a motion for summary judgment to which was attached the following instruments:

- a) An affidavit by Charlie Dog, the personnel manager of the David Corporation, in which he stated that Able had been discharged on December 30, 1959, for drinking, and that he had been paid all wages which were due him.
- b) An affidavit by Easy Fox, the service supervisor of the David Corporation, in which he stated that the truck which was being driven by Able was removed from the lot of the defendant corporation without permission sometime after 4:00 o'clock p.m. on December 31, 1959.
- c) An affidavit by George How, a police officer who reached the scene of the accident shortly after it occurred, in which he stated that Able was intoxicated when he saw him.

The plaintiff, Paul, filed an affidavit by Item Jig, another police officer who went to the scene of the accident with George How, in which Item Jig stated that Able had stated to him that the truck belonged to the David Corporation and that he worked for the David Corporation. It also was averred that Able had on a pair of coveralls on which were printed the words "David Corporation."

How should the court rule on the defendant's motion? Explain the reasons for your answer.

NAME _____

No. _____

MIDSEMESTER EXAMINATION IN PROPERTY A (Law 307)

November 3, 1958

Professor Cribbet

Time: Sixty Minutes

Answer all questions in the space provided. The relative grading weight is indicated in each instance. Please write legibly and succinctly.

I.

(14 points - 2 points for each part)

Mr. Dohme owned stock which was kept in a safety deposit box in Chicago. He was residing in Decatur. On his wife's birthday, he wrote out and handed to his wife, in the presence of the entire family, the following paper:

"Decatur, Ill., Oct. 17, 1957

"I give this day to my wife, Sara I. Dohme, as a present for her (46) forty-sixth birthday (500) five hundred shares of American Sumatra Tobacco Company common stock.

Leopold Dohme"

Mr. Dohme died six days later. His wife now claims the stock as her own. A son, as executor, claims the stock for the estate.

1. Was there a valid gift to the wife? Why or why not?

2. Would the case for a gift to the wife be stronger or weaker if the 500 shares of stock had been in Mr. Dohme's possession in his Decatur home at the time the paper was handed to Mrs. Dohme? Why?

3. Would the case for a gift be stronger or weaker if the shares had been physically transferred to Mrs.Dohme at the birthday celebration? Why?

4. Assume the original facts, except that the paper stated: "I will give to my wife, etc." Dohme then died with the stock still in Chicago. Would that be a valid gift? Why or why not?

5. Assume the original facts, except that no paper was involved. Mr. Dohme, in front of the entire family, stated: "Darling, for your birthday I am giving you five hundred shares of that American Sumatra stock. I don't have it with me now, but as soon as I can get to Chicago I will give it to you." If you represented the wife and claimed that a gift had been made, what would be your best argument? Explain.

Assume the original facts, except that two days following the alleged gift Mr. Dohme had a quarrel with his wife and demanded the return of the paper, saying, "I've changed my mind, you she-witch; you'll never get the stock." He did in fact secure the paper and tore it to pieces. He died four days later.

6. If you represented the estate, what argument would you make against the gift? What additional facts would you try to show?

7. If you represented Mrs. Dohme, what argument would you make for the gift?

II.

(6 points)

In Urbana, Illinois, in the summer of 1958, a group of boys were playing baseball on a large lot owned by the father of one of the boys. An exceptionally long "Mickey Mantle drive" carried the ball to the adjoining lot and into a vegetable garden. One of the boys, A, racing for the ball, noticed a gallon milk carton of the waxed paper variety and picked it up along with the ball. When he returned to the playing lot, he tossed the carton high in the air and a green paper fluttered out. B, another boy, seized the paper, which turned out to be a one-thousand dollar bill.

Subsequent investigation showed that the adjoining lot was owned of record (i.e., paper title as disclosed by the records in the county courthouse) by C. C was living in Mississippi and had not been back to Urbana since 1949. D had used the plot as a garden since 1950 and had paid the taxes since 1951. D had paid X \$100 for the lot in 1949 and had entered under X's oral authority. (X in fact had no valid claim to the lot.) C read about the above events in the local newspaper and returned to Urbana following the finding of the bill. Intensive investigation failed to disclose how the bill happened to be in the carton and on the particular property.

A, B, C, and D all claim the one-thousand dollar bill. Who has the best claim to it? Why?

(Lines for answer are on the following page)

(Answer to Question II to be written here)

NAME _____

NO. _____

FINAL EXAMINATION IN PROPERTY A (Law 307)

First Semester 1958-1959

Professor Cribbet

TIME: 4 HOURS

This examination consists of four questions. Question I should be answered in the examination booklet. The remaining questions are to be answered as indicated. Since the midsemester examination counted twenty points, this final examination will be graded on a scale of eighty points. The relative grading weight is indicated in each instance. Please write legibly and succinctly.

I (30)

This question is designed to test your ability to analyze a fairly complicated fact situation and then organize your answer into a coherent and usable memorandum.

Harry Grant and Mabel, his wife, were conveyed an estate in Blackacre, a 360-acre farm located in Champaign County, Illinois, by Gerald Pinehurst, a bachelor, who owned the tract in fee simple absolute. This conveyance was made by a warranty deed in correct form, for an adequate consideration, dated January 3, 1920, and the granting clause read as follows: "Convey and warrant to Harry Grant and Mabel Grant, not in tenancy in common but in joint tenancy." In 1927, Harry Grant died intestate, survived by Mabel, his wife; John, a three-year-old son; and Anne Grant, the mother of Harry. There was never any administration of the estate of the deceased Harry Grant, and Mabel immediately took possession of Blackacre and leased the entire tract to James Doan for a period of five years and "for so long thereafter as said James Doan shall desire to continue farming the land." This was a written lease in proper form and the rental provisions called for a crop share arrangement typical in central Illinois.

In 1935, Mabel Grant remarried and became Mrs. James Johnson III. She conveyed Blackacre in 1940 to Maurice Talbot and Dorothy, his wife, by a warranty deed in correct form and for ample consideration, in which the granting clause read as follows: "Convey and warrant to Maurice Talbot and Dorothy Talbot for life, remainder to their heirs." This deed was signed by Mabel Johnson only. Mr. and Mrs. James Johnson III then moved to Florida. James Doan continued in possession of the land as tenant. In 1945, Dorothy Talbot died testate, leaving such interest as she might possess in Blackacre and other property to her only adopted child, Benjamin Talbot. Her will was properly admitted to probate and the necessary legal proceedings were correctly carried out. In 1950, Maurice Talbot, widower, deeded all of his interest in Blackacre to John Hobart by a quitclaim deed in proper form and for adequate consideration, containing the following granting clause: "Convey and quitclaim to John Hobart and his heirs for so long as Blackacre is used for farming purposes." Maurice Talbot died testate in 1952, survived by his adopted son, Benjamin Talbot, and his (Maurice's) sister, Mrs. James Jordan. By the will, Maurice Talbot left his entire estate to the First Baptist Church of Urbana, Illinois. James Doan was still farming the tract.

Champaign has now grown to the extent that Blackacre is near the city limits and ripe for subdivision development. The officers of the Early Living Acres Corporation have come to you and have asked you to acquire a good title to Blackacre for them. This means that you must obtain deeds from all of the individuals having any property interest in Blackacre so that the corporation will obtain title in fee simple absolute. Prepare a memorandum in which you analyze the property interest of each individual involved, stating the nature of the estate held, the reason for your conclusion, and whether a conveyance should be obtained from the individual.

NAME _____

NO. _____

MIDSEMESTER EXAMINATION IN PROPERTY A (Law 307)

November 20, 1959

Professor Cribbet

TIME: Sixty Minutes

Answer all questions in the space provided. The relative grading weight and approximate time you should devote to each question are indicated in each instance. Please write legibly and succinctly.

- I. (3 points; 10 minutes) A, an Illinois resident, imported from Canada two silver gray foxes, a male and a female, for breeding purposes, and kept them confined in a pen floored and enclosed by a plank wall five feet high. Six months later the male fox "gnawed out," escaped, and was not seen in the vicinity thereafter. A searched for him and set a number of traps near the place of confinement. Several days later the fox was killed by B in a thicket some fifteen miles from A's property. B skinned the fox and preserved the hide. The hide was seen by A and identified, due to some special markings, as the skin of A's fox. Which party is entitled to the hide? Why?

- II. (7 points; 20 minutes) A owned and operated a hotel in Chicago. He employed B to decorate several rooms in the hotel and in the course of the work B found it necessary "to raise up a rug which was on the floor, and under this rug he found \$760.00 in the form of thirty-three old twenty-dollar bills, around which was wrapped a new one-hundred dollar bill." Evidence indicated that the money must have been there for at least ten years. A claimed that he knew to whom the money belonged and B gave the roll to him. Later it developed that A did not know who owned it, but he now claims it for himself. Litigation appears imminent. Give the argument for A.

Give the argument for B.

To which party would you award the money if you were the judge in a trover action brought by B against A, after proper demand made? (No reason need be given.)

III. (10 points; 30 minutes) A was a widow sixty-six years of age. She had been a lifelong hypochondriac, who invariably appeared to suffer the symptoms of the disease being currently discussed in the medical section of Time. Convinced that she was suffering from cancer of the blood and would soon drift on to a better life, she called B, a nephew, to her home and handed him a key to her safety deposit box, saying, "B, this is yours. On my death, you may have the jewelry contained therein." A few days later she decided that she did not have cancer of the blood at all but had really suffered from a series of cerebral strokes and would soon die from this cause. She summoned C, a niece, to the house and gave her a duplicate key (the only one she had left) to the safety deposit box, saying, "C, this is yours. You may have the jewelry contained in the box." C replied, "Auntie, you have already given the jewelry to my brother (B), and I don't want it anyway because I have more jewelry than I can wear now."

A died the same night from a broken neck when she fell down the stairs of her house while trying to answer the doorbell. By the statute of descent, all of A's property passed on her death to her only son D, whom she had not seen for several years. The jewelry in the box was found to be worth several thousand dollars. It is claimed by B, C, and D. You represent D. What are his chances of inheriting the jewelry? Explain.

* * * * *

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TIME: 4 HOURS

The midsemester quiz counted twenty points; this final examination will be graded on a scale of eighty points. The relative grading weight is indicated in each instance. All questions should be answered in the examination booklet, beginning on the inside of the first page. Please write legibly and succinctly.

I. (20 points)

In 1940, Amos Brown died testate in Urbana, Illinois. He owned Blackacre, a Champaign County farm, in fee simple absolute and his will devised Blackacre to his son James Brown "to have and to hold for so long as the land shall be used for farm purposes." Amos was survived by a wife, Anne, and by two sons, James and Harry. The will was properly admitted to probate and in due course the estate was closed and the executor discharged.

James Brown married Lucille in 1945 and two daughters were born in 1947 and 1948 respectively. In 1955, James died testate, devising Blackacre to "my wife Lucille as long as she remains my widow. In the event of her remarriage then said remainder of my property is to be equally divided between my daughters Judy and Kay." In 1958, Lucille died testate, without having remarried, and her will devised Blackacre to the First Methodist Church of Urbana, Illinois. No provision was made for the children.

Blackacre, although still a farm, is now prime land for a new shopping center and your client would like to purchase it, providing he can secure a merchantable title in fee simple absolute. All of the parties mentioned are alive and well except those whose death has been specifically mentioned. Analyze the property interests which are or may be held by each individual. Discuss fully.

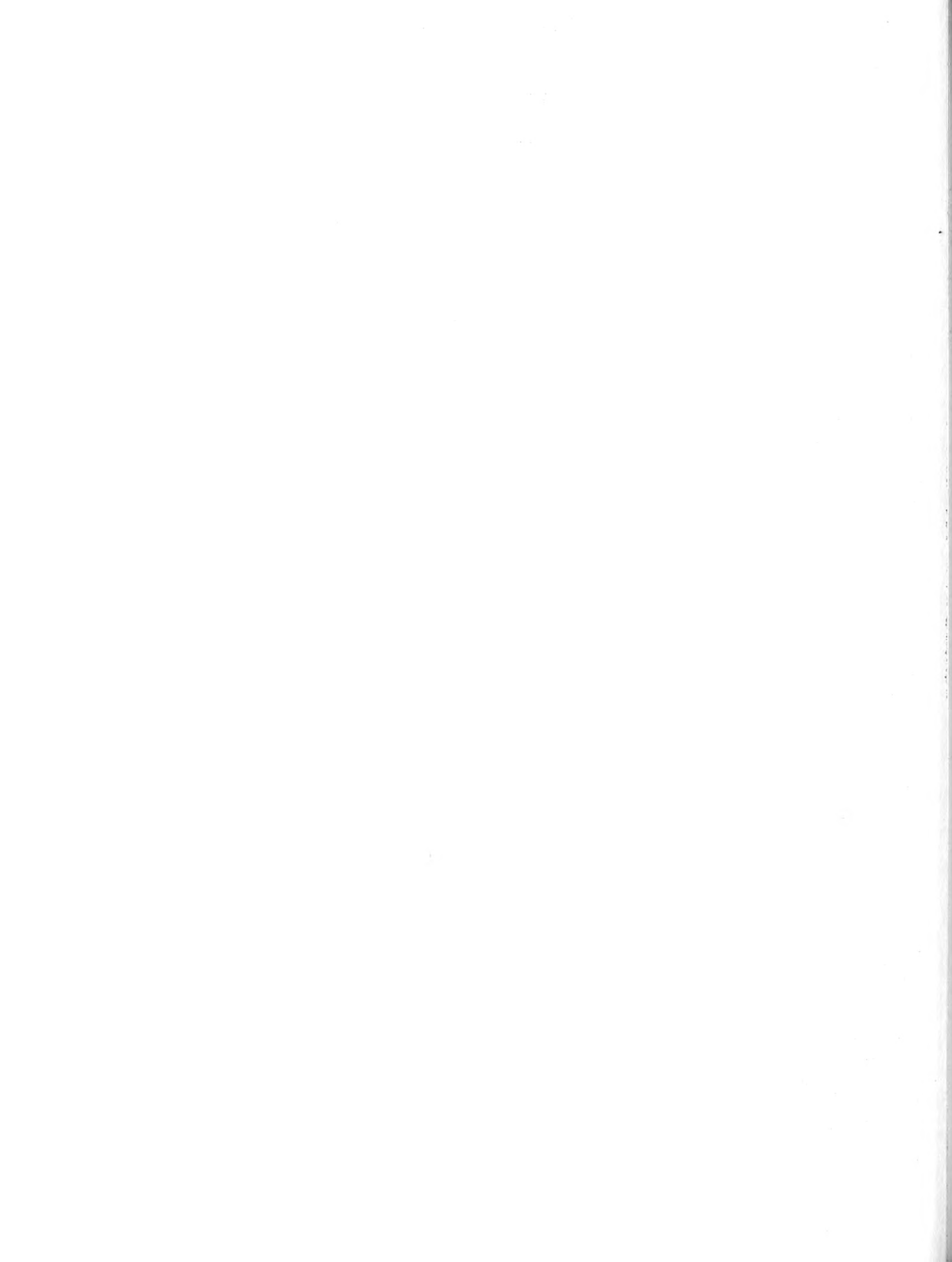
II. (30 points)

Many of the problems in real property arise when the lawyer attempts to decide on the state of the title to Blackacre by examining an abstract of title. Assume that each of the following hypotheticals represents a situation appearing in a separate abstract. Indicate the state of the title in each case and briefly give the reason for your answer. The land is located in Illinois in each instance.

Abstract # 1. In 1954, Henry Hart conveyed by warranty deed to "George and Mary Brown, as husband and wife." Nothing is shown as to the marital status of Henry Hart.

Abstract # 2. In 1925, Marjorie Jones, widow, conveyed to "Mary Smith and her heirs."

Abstract # 3. In 1919, Harry Horn and Mary his wife, having received title to Blackacre "in joint tenancy and not in tenancy in common," conveyed to "Samuel Horn for life, remainder to those children of Samuel who survive him." In 1921, Samuel Horn died unmarried and childless. Mary Horn had preceded him in death.



Abstract # 4. In 1930, Herman Holmes and Anne his wife conveyed to "Ray Holmes for life, remainder to Joseph Holmes for life, remainder to the heirs of Joseph."

Abstract # 5. In 1958, John Rutgers, a bachelor, died seised of Blackacre. He devised the land to "my illegitimate son Harold Rone and the heirs of his body." Harold was married to Marjorie, who was pregnant with their first child. John Rutgers was survived by Ruth, his mother, and Sara, the daughter of a deceased sister of John.

Abstract # 6. In 1945, Terry Randall and Eugenia his wife leased to "Amos Jones for so long as said lessee shall desire to use the premises as a drug store, the same to be rent free." In 1959, the Randalls brought ejectment against Jones after giving him sixty days' notice to quit. The suit is still pending and Jones is still operating a drug store on the land.

Abstract # 7. In 1935, Abner Holt, a widower, conveyed to "John Brown and Mary his wife, not in tenancy in common but in joint tenancy, with right of survivorship." In 1939, John Brown conveyed "such interest as I have in Blackacre to my son Jack Brown and his heirs forever." In 1942, Mary Brown died intestate survived by John and Jack. In 1945, Jack died testate, devising "all of Blackacre to my beloved secretary Rita Ritz." The estate of Jack Brown was heavily encumbered by debts and his wife, Lola, renounced the will and elected to take dower.

Abstract # 8. In 1959, Russell Noles, a bachelor, conveyed to "Margaret Pease for life, remainder to my heirs."

Abstract # 9. In 1938, Lester Moe and Hazel his wife conveyed to "Joe Massey for the use of Herman Yoder and his heirs, but if Herman die without surviving children then to Isaac Yates and his heirs."

Abstract # 10. In 1957, Caesar Roma and Mabel his wife conveyed to "Eugene Karrel for life, remainder to his heirs." In 1959, Eugene Karrel, a bachelor, conveyed to "Arthur Siebert in fee simple absolute."

III. (15 points)

Rex Wright was an impecunious but resourceful individual who lived "high on the hog" in Danville, Illinois, by the simple expedient of putting up a good front and mingling with the socially correct crowd. Since he desired a new hi-fi recording set, he went to the Radio Shoppe, Inc., managed and in fact largely owned by an acquaintance, Roger Frain, and represented that he was a man of solid financial means. He told Frain that he carried an average bank balance of \$5,000 and Frain did not bother to check with the bank. In fact, Rex kept a \$50 account so that he could have printed personal checks. Rex purchased a \$959.99 hi-fi set and paid \$59.99 in cash. He signed an agreement of sale which obligated him to pay \$100 a month for nine months plus carrying charges, title to remain in the Radio Shoppe, Inc. until the last payment was made. Three weeks later at a large party at Rex's house, Simon Dregon so admired the set that he offered Rex \$600 in cash for it. Roger Frain was present and, downing a long slug of Scotch, said: "Are you crazy? Rex paid nearly \$1000 for it just a few weeks ago." Nonetheless, to please an old friend, Rex accepted the offer,

taking \$300 in cash plus a promise to pay \$300 in a few days, and Simon said he would pick up the set the following day, which he did. Roger said nothing more and walked away after Rex pocketed the \$300.

A week later Rex Wright died intestate, leaving only debts to be distributed according to the statute of descent. Simon had not yet paid the remaining \$300 when Radio Shoppe, Inc., served him with notice to surrender the hi-fi set to them at once or be faced with a replevin action.

Simon Dregon comes to you for advice. Explain the legal facts of life to him, giving a full analysis of the various possibilities.

IV. (15 points)

The Ajax Realty Company held title in fee simple absolute to numerous apartment buildings in Chicago. In 1945, Ajax leased the entire first floor of one building to Modern Retail Industries for office and display space. It was a twenty-year written lease with option to renew for an additional period of twenty years, at \$12,000 annual rental plus a further sum to be determined on the basis of a percentage of gross profits. The lease contained a specific prohibition against assignment without the written consent of the Ajax Realty Company. In 1950, Modern Retail Industries transferred all their interest in the lease to New Plastics, Inc., with the written consent of Ajax. In 1955, New Plastics, Inc., transferred an estate for eight years in the premises to Hart and Co., Inc., in spite of the objection of Ajax. Ajax did accept rent directly from Hart but continued to protest the validity of the transfer from New Plastics.

One of the terms of the base lease was a covenant by Ajax to keep the main entrance hall in good repair. This Ajax failed to do, and in January 1957, a business guest of Hart and Co., Inc., fell over a broken hall tile and was so severely injured that he incurred \$15,000 in medical bills. Hart demanded that Ajax pay this amount but the company refused on the grounds that Hart was no more than a trespasser, had no rights in the lease, and was not protected by the covenant to repair. Hart then vacated the premises in July 1957, refused to pay any further rent, and the entire floor has been vacant since. In July 1958, the entire building was condemned for a new freeway to furnish access to the northern suburbs of Chicago. The business guest has not yet been compensated for his loss by anyone.

Discuss the rights of the various parties arising from this combination of events.

NAME _____

NO. _____

MIDSEMESTER EXAMINATION IN PROPERTY B (Law 308)

March 31, 1959

Professor Looper

I. (30 minutes)

O is the owner of the land at the time the first conveyance listed below is made. The land is located in a jurisdiction which has a grantor-grantee index and does not have a tax lien statute which requires the searching of the grantor index for periods after a grantor conveys his interest in order to determine whether there are tax liens on the property. O and all other persons are competent to convey and receive, as the case may be, title to real property. All conveyances are by general warranty deeds. Deeds are not recorded except as stated. Each grantee is a purchaser for a valuable consideration without notice (assume also that there is no basis for inquiry notice) of the prior deed unless the stated facts establish otherwise.

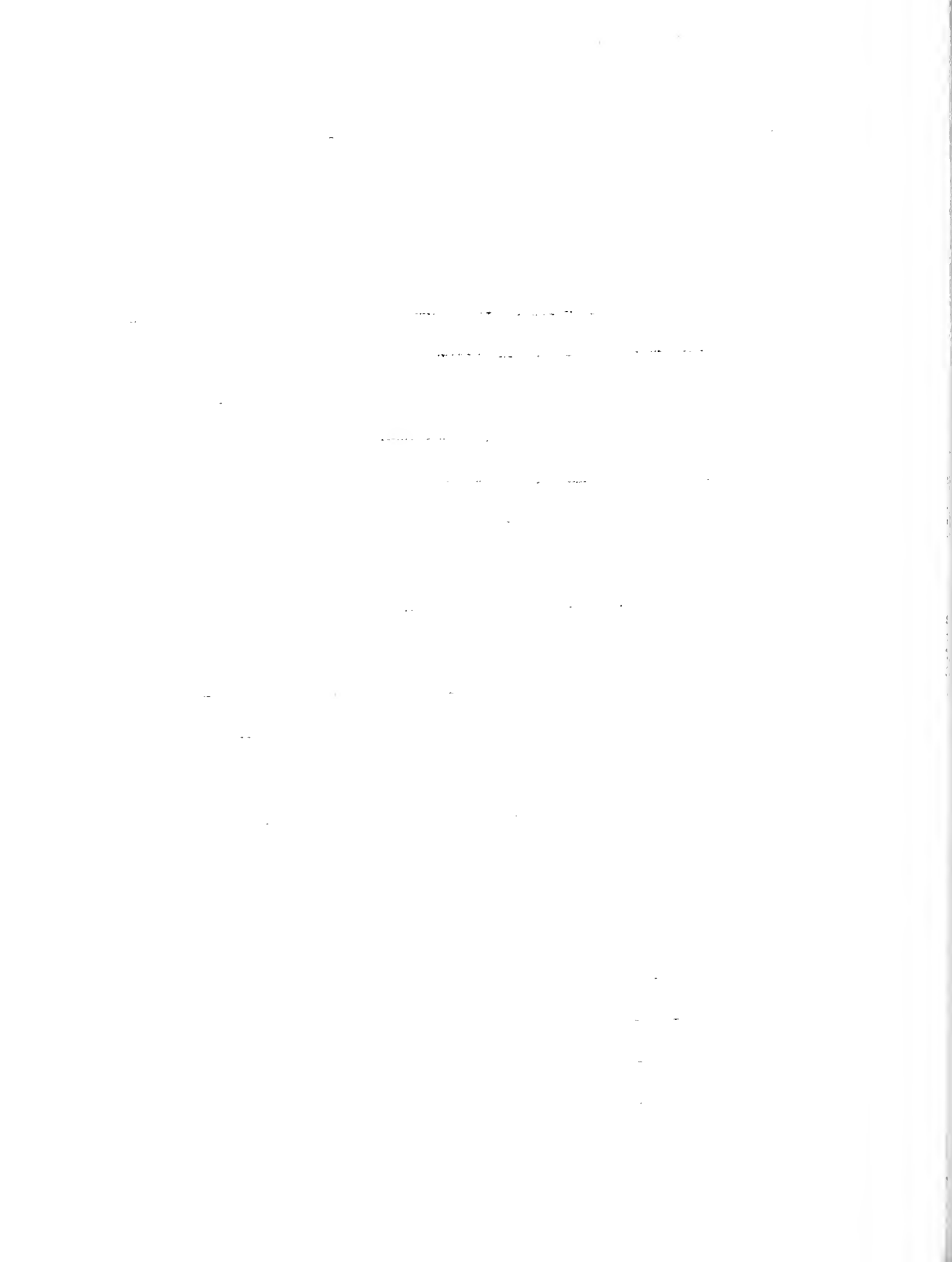
Assume that the statute in the controlling jurisdiction is ambiguous as to whether it is a notice statute or a race-notice statute. In the space provided write "notice," "race-notice," or "it makes no difference," depending upon the position you should take as to the type of statute in view of the person you represent. All conveyances or mortgages relate to the same land. The various events occur in the order they are listed.

1. O conveys to A; A conveys to B; B records;
O conveys to C; A records; C records. You
represent C. _____
2. O conveys to A; O conveys to B who has notice
of A's unrecorded deed; A conveys to C who has
notice of B's unrecorded deed; B records; A
records; C records. You represent C. _____
3. A conveys to B; B records; O conveys to A; A
conveys to C. You represent C. _____
4. O conveys to A; A conveys to B; O conveys to
C; B records; C records. You represent C. _____
5. O conveys to A; A conveys to B; B conveys to
C; O conveys to D. You represent C. _____
6. Same as No. 5 with this fact added at the end:
D records. You represent C. _____
7. O executes a mortgage in favor of A to secure a
loan of \$5000; O executes a mortgage in favor of
B to secure a loan of \$3000; O executes a mortgage
in favor of C who knows of A's unrecorded mortgage
to secure a loan of \$3000; C records; B records; A
records. You represent B.
(a) The value of the land is \$4000. _____
(b) The value of the land is \$6000. _____

II. (20 minutes)

In 1950 in consideration of \$10,000, R executed a warranty deed by which he purported to convey the fee simple absolute in Blackacre to E. In 1954 E quit-claimed Blackacre to his friend F for a consideration of five dollars.

In 1958 E and F discovered that Blackacre was subject to a mortgage which secured the payment of \$12,000 to T in 1965. Recently F has instituted an action against R to recover \$12,000 as damages for breach of the covenants for title contained in the 1950 deed. What judgment?



You are a junior in the law office of Davis & Looper and a senior partner calls you into his office and states as follows: "Mr. Russell O'Sullivan came in today and handed me this piece of paper. You will observe that the paper simply provides that he promises to pay \$50,000 two weeks from today for the land and buildings located at 307 West Vermont Street, Urbana, Illinois. The other party to the document agrees to convey the land and buildings on receipt of the \$50,000. Both parties signed the paper in duplicate and the other copy is in the hands of the other party. Mr. O'Sullivan said someone told him he ought to see his lawyer. By the way, he wants to carry out his promise. I want you to give me a brief memorandum pointing out what I should advise Mr. O'Sullivan to do."

FINAL EXAMINATION IN PROPERTY B (Law 308)

Second Semester 1958-1959

Professor Looper

Instructions: You have four (4) hours in which to complete this examination.
The examination is composed of two parts, each part to take about two hours.

Part I is to be answered in the examination booklet.

Part II is to be answered on the mimeographed sheets.

PART I (Two Hours)

1. (45 minutes) In Commissioners of Homochitto River v. Withers, Mr. Justice Handy said:

"What must be understood by the term private property? It appears to us that it applies to such property as belongs absolutely to an individual, and of which he has the exclusive right of disposition; property of a specific, fixed, and tangible nature, capable of being had in possession and transmitted to another, as houses, lands, and chattels."

Comment on this quotation, stating wherein you agree or disagree with it, and for what reasons, drawing on examples from the casebook and classroom discussion (not excluding the materials covered in the first semester). You will be graded primarily on the pertinency of your illustrations.

2. (45 minutes) In the post-war building boom in a certain city, O bought a tract of vacant, unimproved land in a general area which was being rapidly developed primarily for residence purposes. O's tract consisted of a single block, for which he prepared and filed a plat, in due form and with proper authorization, which subdivided this block into 50 lots which were duly designated on the plat. Then O began to sell these lots. This subdivision was designated by O as the "Pleasant View Addition." O erected a large billboard on this land which carried the heading "Pleasant View Addition," and also the statement that it was to be a restricted area. The same references were made in a number of newspaper ads which O ran to promote his sale of the lots. These ads appeared at intervals for a period of about a year, during which period O sold all of the lots except Lots 7, 16, 23, 34, and 46, which still remain unsold. O removed the billboard at about the same time that he stopped running the ads. Each of the deeds to the lots sold contained this language:

"Subject however to the following conditions, namely, that no building except single-family residences shall be built on the above-described premises, no residence shall be built at a cost of less than \$10,000, and no building shall be built on said premises nearer than 30 feet from the street."

A bought Lot 6. Some time later B bought Lot 40, which was located on the opposite side of the block from Lot 6. Both of these deeds, of course, contained the above restrictions. A built a house on his lot and now resides there. B, however, did not build, but about a year later sold his lot to C, the deed to C containing no reference to the restrictions. C began to build a grocery store on Lot 40. A objected, and brought a suit to restrain C from doing so. As defenses, C alleged as follows:

- (a) He was not bound by the restrictive provisions in the deed to B.
- (b) Whether or not he was bound by such restrictions, A had no standing to enforce them.
- (c) Whether or not A could have enforced the restrictions against C at one time, he could no longer do so, because the restrictions had

ceased to be binding. On this count, C alleged that the opposite sides of all four streets which bounded the block in question had, in the 5 years since the subdivision was laid out, been built up largely with small business buildings of one kind or another.

Discuss the validity of these defenses.

3. (30 minutes) You are attorney in a firm with a large real estate practice. Your largest single client is the Savings & Loan Association for which you do title searches of land on the security of which the Association is contemplating making loans. In a local law review appears an article entitled "Title Insurance: Our Conveyancers' Dereliction of Professional Duty." The concluding paragraph of this article is as follows:

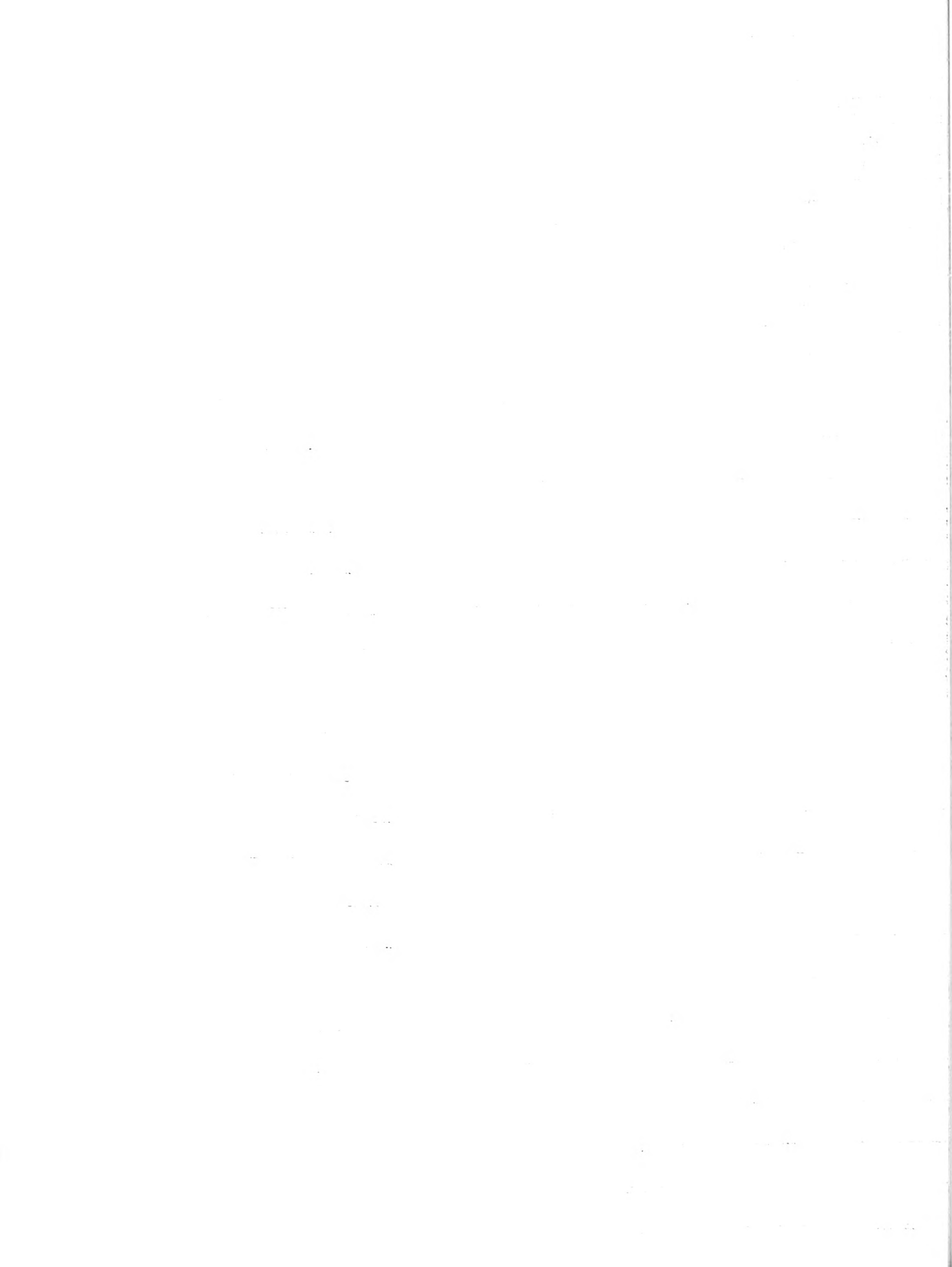
"Although both of the basic systems of title protection in modern land transactions in the United States are available in this state, namely, registration and recordation, our history and our practice show that we have put our faith (and the bulk of our land) under the latter. However, it is to be regretted that the members of our conveyancing bar have been sloth-like in their acceptance and utilization of policies of title insurance, the only available means of making the recording system really effective. Particularly is this true where the conveyancer is hired by a lending institution and the prospective purchaser of the land is not represented by counsel. Policies of title insurance afford security to the purchaser of his investment which is of course the only security he can get under a recordation system, since it is only under a registration system that he can get security of his title. Title insurance should be recommended by conveyancers for all transactions, and it is submitted that insofar as they do not do so our conveyancers are failing to fulfill their professional obligations to their clients since their prime consideration should be affording their clients with as much security as possible so that they (the clients) will not unexpectedly lose their land (and their investment) because of latent and unsuspected defects in their titles."

The President of the Savings & Loan Association, your principal client, tells you that several of the Association's borrowers have seen this article and have inquired whether it is sound and why title insurance is not recommended to them. Some of these inquiries have been couched in terms of complaint. He asks you to give him a memorandum which he can use as a basis for talking with borrowers.

Page 2

5. D and A owned adjoining lots in Urbana, Illinois. In 1930 they built garages and graded and paved a driveway 8 feet wide astride the common boundary line. Each paid one-half the cost of grading and paving the driveway. In 1945 A sold to P. Now D is laying out a new driveway around the other side of his house and is about to build a fence on his property along the line down the middle of the old drive. P's house is only 4 1/2 feet from the prospective fence and he cannot reach his garage around the other side of his house without going to considerable expense to cut down large trees which greatly enhance the attractiveness and value of his property. P brings a bill to enjoin interference with his use of the entire 8-foot drive. What result?

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7. Write in each blank space the name of the owner of Blackacre after each transaction involved. Where an equitable ownership is enforceable against the holder of the legal title, the equitable owner is "the owner." If the issue is in doubt write the word "doubtful." The issue is in doubt if the cases are in conflict. If you should answer any question "doubtful", explain why it is such in the space provided after the end of Part (4).

Unless it is otherwise stated in the question, you are to assume the following facts: O owns Blackacre (both actually and of record) immediately preceding the first transaction. Blackacre is vacant land and is located in a jurisdiction that has a grantor-grantee index and does not have a tax-lien statute requiring searching the grantor index for periods after a grantor conveys his interest. O and all other persons are competent to convey or receive, as the case may be, title to real property. All deeds contain full covenants of warranty. None of the persons involved in any of the questions has actual knowledge of any facts not disclosed by the record chain of title except as knowledge is indicated.

	<u>Notice Statute</u>	<u>Race-Notice Statute</u>
(1) O to A, not recorded	_____	_____
A to B, recorded	_____	_____
B to C, recorded	_____	_____
O to D, recorded	_____	_____
(2) O to A, not recorded	_____	_____
O to B, not recorded	_____	_____
A records	_____	_____
B to C, recorded	_____	_____
(3) O to A, not recorded	_____	_____
O to B, not recorded	_____	_____
B to C, not recorded	_____	_____
A records	_____	_____
A to X, recorded	_____	_____
B records	_____	_____
(4) O to A, not recorded	_____	_____
O to B, not recorded	_____	_____
(B knows of the deed to A)	_____	_____
B to C, recorded	_____	_____
(C is shown the deed from O to B)	_____	_____
A records	_____	_____
A to D, recorded	_____	_____

Explain "doubtful" answers here:-

FINAL EXAMINATION IN PROPERTY B (Law 308)

Second Semester 1959-1960

Professor Cribbet

Time: 4 Hours

All questions should be answered in the examination booklet, beginning on the inside of the first page. The relative grading weight is indicated in each instance. Please write legibly and succinctly.

I. (20 points) A widow, Mrs. Ogden Reid Storke, orally agreed to sell Blackacre to a neighbor, Mr. Jesse Jansen. Mr. Jansen paid Mrs. Storke \$5,000 in cash at the time of the agreement and a warranty deed in proper form was given to a local notary public, Mr. Harold Black, to be delivered to Mr. Jansen upon the payment of a further sum of \$5,000 and the delivery of a purchase money mortgage on Blackacre for \$20,000. The deed was not to be recorded until all conditions were met and Blackacre was to remain in the possession of Mrs. Storke until that time. The parties orally agreed that time was of the essence and that the contract must be performed by April 1, 1959.

Jansen did not meet the conditions on April 1, claiming that the title was unmarketable because of outstanding liens. Mrs. Storke managed to have the liens released but died testate April 30, 1959. Her will left all of the real property to her only daughter, Judy Storke, and all of the personal property to her only son, Richard Storke, a minor. The daughter was appointed executrix of the estate and promptly tendered the \$5,000 plus interest to Jansen and demanded return of the deed from Black. The latter ignored the request and on May 25, 1959, delivered the deed to Jansen upon the payment to Black of \$5,000 for the Storke estate plus a properly executed mortgage. The daughter refused to accept either item from Black. Jansen promptly recorded the deed and took possession of Blackacre, without force.

The daughter, Judy Storke, is twenty-two years old and has good business sense. She recognizes the potential value of Blackacre due to a projected new highway in the area and, in fact, has a prospective purchaser who will pay \$50,000 for the land if she can produce a clear title to it. At this stage Judy Storke seeks your legal services. How would you advise her? Explain. Be specific as to what legal or equitable relief you would seek, if any.

II. (20 points) O, an Illinois realtor, conveyed Blackacre to A, purportedly in fee simple absolute, by a statutory short form warranty deed in 1938. (Price - \$15,000) At that time O had only a life estate in the land conveyed and the remainder was claimed by X under a will that was properly probated in the county court where the land was located. A had not in fact checked the records but relied solely on O's warranty deed. In 1945, A conveyed by statutory short form quitclaim deed to B, who paid \$20,000 but did not check the records. The two deeds were both recorded as soon as delivered. In 1950, B conveyed by statutory short form warranty deed to C, who was warned by X, before he purchased the land, that the title was bad. (Price - \$30,000) C inquired of B and was assured of the validity of the title, B saying, "What are you complaining about; I'm giving you a warranty deed, aren't I?"

C occupied the land until 1959, when O died, at which point X brings ejectment against C and seeks to recover possession of the land. C now comes to you for advice. Explain the rights of the various parties. If you advise suit on any of the covenants in the deeds, explain specifically which ones are involved and why. What effect would it have on your answer if O acquired X's interest in Blackacre in 1958? Who would then own Blackacre? Explain.

III. (20 points) In 1920, O owned a tract of undeveloped land bounded on the north by Allen Avenue, on the west by Baker Street, and on the south and east by the land of strangers to this proceeding. In 1923, O built a house on the eastern portion of his tract and, after securing permission of the city, laid sewer pipes from the house westward to Baker Street where they connected with the main city sewer. The pipes were buried six feet in the ground and were not visible, except to moles working in the community. In 1931, O subdivided his tract into four lots of equal size with boundary lines running from north to south and built a house on each lot, connecting each one with the buried sewer. These lots were numbered 1, 2, 3, and 4, reading from west to east. O sold lot 4 in 1931, lot 3 in 1932, lot 1 in 1934, and finally sold lot 2 in 1937. All conveyances were by warranty deed with the usual covenants and nothing was mentioned as to easements of any kind (in fact none of the purchasers even thought about sewage disposal at the time). The deeds to lots 3 and 4 contained covenants that "said lot will never be used for other than a single family residence." The deed to lot 1 contained no restrictive covenants of any kind but the deed to lot 2 stated "said lot will never be used for other than residential purposes."

By 1958 each lot had been conveyed several times and the then owners were as follows: lot 1 - A; lot 2 - B; lot 3 - C; lot 4 - D. All four lots contained the original houses built by O in 1931. In 1958, A decided to tear down his house and build a service station. The areas to the south and east of the four lots were all residential but the land to the north, across Allen Avenue, and to the west, across Baker Street, was mixed business and "seedy" residential. A removed the house on lot 1 and started to dig a basement, but the workmen struck the sewage pipes and filled the hole with a bit of a mess. B, C, and D secured a temporary injunction, restraining A from building anything on lot 1, other than another residence, and ordering him to restore the sewage pipes to their original condition. At the final hearing the trial court gave a permanent injunction against other than a single family residence and ordered A to allow C and D to continue to use the sewage drain across his land, but held that B could not use the drain without A's permission. A and B filed appeals.

How should the case be decided on appeal? Explain fully. How would the case be affected by the introduction of evidence that a new city sewer was planned for Allen Avenue and would be ready by 1959? Explain.

IV. (10 points) State X is in the eastern half of the United States and has had very little litigation involving water rights. The existing authority indicates that the riparian doctrine will be followed for streams and other natural

water courses and that the English doctrine of Acton v. Blundell will prevail where ground water is involved. Clear Creek is a substantial stream in State X and its source is Clear Spring, which for more than fifty years has produced a dependable flow of water for riparians along the stream. For most of the fifty-year period riparians have used water from the Creek, until 1957 when numerous water wells were drilled in the vicinity of Clear Spring for irrigation purposes. These wells were all located on the lands of the drillers but the project caused the stream to run dry. About 25% of the ground water was used on the land where the wells were located; the remaining 75% was piped to other land in the immediate vicinity. The riparian owners seek injunctive relief against the well drillers. How would you decide the case? Discuss the relevant factors.

V. (30 points) Section 26.547 of the Michigan Statutes Annotated reads as follows: "Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded. . . ."

Consider each of the following cases arising in Michigan:

(1) O, being seized of an indefeasible fee in Blackacre, conveyed by warranty deed to A for full value. A did not record nor did he enter into possession. O then conveyed by warranty deed to B for full value. B had been told by X, a stranger to the title, that he saw O hand A a deed to the land. B ignored this comment, promptly recorded his deed, and entered into possession. Who has the better claim to Blackacre? Why?

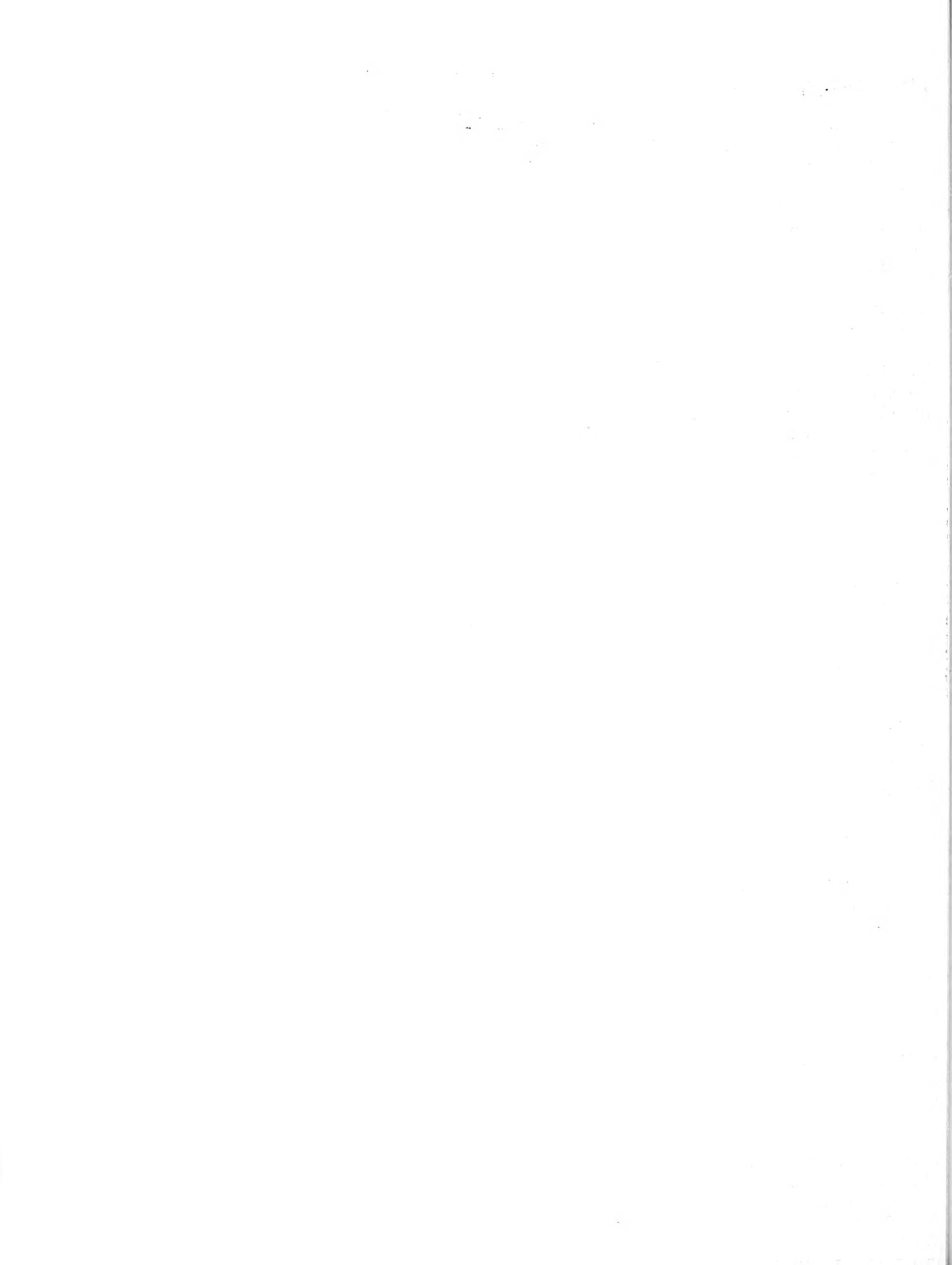
(2) O conveyed by warranty deed to A but the deed was not acknowledged, as required by statute in Michigan. The deed was recorded in this defective condition. O then quitclaimed the land to B, who did not check the records and had no actual knowledge of A's deed. B promptly recorded his deed. Who has priority? Why?

(3) O conveyed by warranty deed to A, who failed to record but who did lease the land to X, who entered into immediate possession. O then conveyed to B, a New York resident, by warranty deed. B had no knowledge of the prior deed to A and never came to Michigan during the transaction. B's attorney promptly recorded the deed. Who now owns Blackacre? Why?

(4) O conveyed to A by warranty deed and the deed was not recorded at once. O then conveyed to B by warranty deed. B was a bfp. A then recorded his deed and a few days later B recorded his. Who has priority? Why?

(5) O executed a contract of sale to A, who promptly recorded the contract. O then conveyed the land to B, who had no actual notice and in fact did not look at the records. B recorded his warranty deed at once. Who has priority? Why?

(6-10) The general Statutes of North Carolina, Volume 2A, Section 47-18, read: "No conveyance of land, or contract to convey, or lease of land for more than three years shall be valid to pass any property, as against creditors or purchasers for a valuable consideration from the donor, bargainor or lessor, but from the registration thereof within the county where the land lies. . . ." Answer each of the preceding five questions in the light of the North Carolina statute, explaining why your answer is different or the same, as the case may be.



FINAL EXAMINATION IN RESTITUTION (Law 330)

First semester 1958-1959

Professor Looper

Total Time: 3 1/2 hours

This examination consists of five questions. In answering these questions, assume that you are in a common-law jurisdiction in which the following statutes are on the books.

STATUTES

Chapter 83. Limitation of Actions.

Sec. 1. Real actions. No person shall commence an action for the recovery of lands, nor make an entry thereon, unless within seven years after the right to bring such action or make such entry first accrued.

Sec. 2. Personal actions. The following actions can only be commenced within the periods hereinafter prescribed:

. . . (b) Actions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be commenced within three years next after the cause of action accrued.

(c) Actions on bonds, promissory notes, bills of exchange, written leases, written contracts, or other evidences of indebtedness in writing, shall be commenced within five years next after the cause of action accrued.

Sec. 3. Counterclaims. A defendant may plead a set-off or counterclaim barred by the statute of limitation, while held and owned by him, to any action, the cause of which was owned by the plaintiff or person under whom he claims, before such set-off or counterclaim was so barred, and not otherwise.

Sec. 4. Absence from state deducted. If, when the cause of action accrues against a person, he is out of the state, the action may be commenced within the times herein limited, after his coming into or return to the state; and if, after the cause of action accrues, he departs from and resides out of the state, the time of his absence is no part of the time limited for the commencement of the action.

Sec. 5. Fraudulent concealment. If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within five years after the person entitled to bring the same discovers that he has such cause of action, and not afterwards.

Chapter 110. Civil Practice.

Sec. 38. Counterclaims. (a) The defendant may set forth, in his answer, as many grounds of defense, counterclaim, set-off, and for relief, as he may have, whether they be such as have been heretofore denominated legal, or equitable, or both.

(b) A counterclaim to a legal or equitable action arising out of contract must itself be a cause of action arising out of contract.

(c) A counterclaim to a legal or equitable action not arising out of contract must arise out of the same transaction as the original claim.

Sec. 72. Relief from judgments and decrees. (a) Relief from final orders, judgments and decrees may be had upon petition filed in the same proceeding. All relief heretofore obtainable, either at law or in equity, shall be available in such proceeding.

(b) The petition must be filed not later than two years after the entry of the order, judgment or decree. Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of two years.

(c) Unless lack of jurisdiction affirmatively appears from the record proper, the vacation or modification of an order, judgment or decree pursuant to the provisions of this section does not affect the right, title or interest in or to any real or personal property of any person, not a party to the original action, acquired for value after the entry of the order, judgment or decree but before the filing of the petition, nor affect any right of any person not a party to the original action under any certificate of sale issued before the filing of the petition, pursuant to a sale based on the order, judgment or decree.

(d) Nothing contained in this section affects any existing right to relief from a void order, judgment or decree, or to employ any existing method to procure that relief.

QUESTIONS

1. P took an assignment of a life insurance policy from X on the life of Y. X had no insurable interest in Y's life, but P took the assignment after the insurance company's officers had assured him that the policy was valid. P paid premiums on the policy for several years. Y died, and the insurance company refused to pay P the amount of the policy. Advise P as to his rights.

2. A is B's cousin. On B's death, A, mistakenly believing that he is B's heir and next-of-kin, takes over B's farm. A pays the taxes, discharges a mortgage indebtedness of \$5000, tears down an old building and uses the wood for kindling, builds a swimming pool worth \$3000, and operates the farm for two years at a profit of \$8000 per year. B's heir, a nephew, now returns from a long trip abroad and asks you what are his rights and liabilities.

3. D leased to P for three years a piece of land on which was a factory. The lease gave P an option to purchase the premises during the term. There was no provision in the lease for making repairs or for insurance. D insured the property. The factory burned down, and D collected the insurance. On the assumption that D would rebuild, P took up his option to purchase the property and made the required deposit of 10% of the purchase price. D thereafter refused to rebuild. P demanded the return of his deposit, which was refused. P then sued out a bill of complaint in equity, asking the court to give relief in the alternative, either

(a) reformation of the written lease agreement, to clarify D's duty to rebuild, or (b) rescission of the land sale contract and restitution of the deposit. D counterclaimed for specific performance. How should the case be decided?

4. G, a gangster, disappeared in 1948. Investigation disclosed that he left town after several attempts had been made on his life. In 1955, A, the administrator of his estate, demanded payment of his life insurance, which was payable to his estate. The company refused payment unless affirmative proof of G's death could be produced. A brought suit on the policy and recovered judgment for \$10,000, its face value. The judgment was paid, and A distributed the proceeds as follows: to the creditors of G he distributed \$4000, and the balance of \$6000 he distributed equally to G's next-of-kin, who happened to be X, Y and Z. X used his share of the money to pay off his debts; Y bought an automobile which he would otherwise have been unable to afford; and Z bought uranium stock which rapidly appreciated in value. During all this time Y had been harboring G from his pursuers, and was in fact the only person who knew of G's continued existence. Finally in 1959 G left hiding and returned to public life. The insurance company now comes to you for advice as to the possibility of getting its money back.

5. D advertised for sale the "south 60 acres of my 80-acre farm." P did not see the advertisement but heard from a neighbor, "D's farm is for sale." P was shown the premises by D, who made no statement as to the reservation of the north 20 acres, believing P knew of this from the terms of the advertisement. But P in fact believed the whole 80-acre tract was encompassed in the offer. Accordingly he paid the stipulated purchase price and accepted a quitclaim deed, which, however, described by metes and bounds only the south 60 acres. P went into possession of the entire 80-acre tract, and soon discovered a small uranium deposit under the north 20 acres which he mined for several years. He did not discover until six years after the conveyance the discrepancy between the terms of the deed and his original understanding. He delayed taking action a further six months. P then sued D for reformation of the deed to enlarge the terms of the conveyance to include the north 20 acres. D demurred and also filed a counterclaim for \$8000, alleging that P owed him \$5000 for the conversion of the uranium and \$3000 for the rental value of the north 20-acre tract. How should the case be decided?

TOTAL TIME: 60 MINUTES
(The two questions count equally.)

1. P, an attorney at law, entered into an oral agreement with D to institute a suit in D's behalf for the recovery of damages for personal injuries allegedly sustained by another's negligence. Under this agreement P was to receive one-third of any recovery, whether by way of judgment or settlement. P spent several weeks gathering evidence and doing other research, and in the process incurred various expenses. He then instituted suit and opened negotiations for a settlement, both of which were pending at the time he was disbarred from the practice of law for reasons not connected in any wise with the prosecution of D's suit. After P's disbarment, other attorneys were substituted for him and D's suit was subsequently settled for \$6,000. D refused to pay P anything. What are P's rights against D?

[See 79 A. 2d 310; 85 F. 2d 50]

2. On October 1, 1959, Alexander and Bush each deposited \$500 with Stake, who delivered to each of them a written document which read as follows:

"I hereby certify that I have received the following amounts:

Alexander	\$500
Bush	\$500
Canfield	\$1000

"In the event Black is elected governor of the State at the ensuing election, then I am to pay Canfield \$2,000; in case White is elected governor, then I am to pay \$1000 to Alexander and \$1000 to Bush.

John Stake"

On October 30, Alexander demanded from Stake the return of his \$500 deposit. On November 4, Black was elected governor by a landslide. On November 5, before Stake had paid any of the deposited money to Canfield, Bush demanded the return of his \$500. Stake refused both demands, and on November 6 delivered the \$2000 to Canfield. Advise Alexander and Bush as to their rights, if any.

[Cf. Question #24, Illinois State Bar Examination, September 1959]

FINAL EXAMINATION IN RESTITUTION (Law 330)

First Semester 1959-1960

Professor Looper

TOTAL TIME: 3 HOURS

1. A contracts to convey lot No. 35 with the house thereon to B. By mistake the adjoining vacant lot (No. 36) is conveyed. B moved into the house on lot 35. Shortly thereafter B's creditor, X, levies execution on the lot as it appears in the registry office, that is, lot 36, as belonging to B. At the sale the sheriff points out lot 35 as the lot to be sold and B, who is ignorant of his lack of title, says nothing. C is the highest bidder, paying \$10,000, of which \$8,000 goes to B's creditors, \$500 to the sheriff for expenses, and the balance to B. Does C have any remedy?
2. An aged woman agreed in writing to give to her nephew "all of my property of every description" in return for the nephew's promise to support her during life. Her known property consisted of a small cottage worth perhaps \$10,000 and life insurance policies for \$5,000. After her death intestate it appeared that a former employee had embezzled \$10,000 from her. This he donated to his niece. She, ignorant of its source, invested it in land on which she found oil after boring several unproductive holes. The decedent never knew of the embezzlement and assumed, as did the nephew, that she had no property other than the cottage and the insurance policies. What are the rights of the parties?
3. V was the owner of a small tract of land on which was located certain springs or wells of mineral water known as the Crystal Rock Springs. On January 1, 1959, V sold the premises, including the springs and buildings located thereon, to P for the sum of \$10,000, representing that the waters were natural mineral waters and were bottled and sold as they flowed from the ground. He also stated to P that the daily natural flow of water from the Crystal Rock Springs was 1200 gallons and that this rate would continue in the future. The purchase price was to be paid in ten yearly installments of \$1000 each. After going into possession and paying the first installment, P expended \$4000 in erecting a small bottling plant for bottling the water in the amount which V had represented would be the natural product of the springs. After P had bottled a considerable amount of water, it was discovered that the water was not a natural mineral water and that the flow did not exceed 460 gallons. Thereafter P continued to bottle small quantities of the water, until the plant burned down on August 1, 1959. On January 1, 1960, when the second installment payment became due, P refused to make payment and demanded of V the return of his first \$1000 payment. V refused and sued P for specific performance of the contract. P now comes to you for advice.
4. Adams occupied an apartment on the third story of the Eagle Hotel, which was a wooden building. He had an office in a brick bank building in the same town. As he started on a short trip, Adams requested the landlord of the Eagle Hotel to take out insurance on the furniture in his apartment. The landlord showed the furniture to the insurance company's local agent, who looked at the furniture in the hotel room and agreed to put on a binder for \$2500 pending a formal application and issuance of a policy. As they went downstairs the landlord referred to Adams' office in the brick bank building. The agent got the impression that the furniture was to be kept in that office, and in writing up the binder, he described the property as being in a brick office building. The premium would be at the rate of one per cent on property in a brick building and two per cent on property in a wooden building. The next day the agent collected the \$25 premium from the landlord. A week later the furniture in Adams' apartment was destroyed by fire. The insurance company paid the face value of the policy. Upon discovering that the property was located in the hotel, the insurance company demanded that Adams return the payment. What are the rights of the parties?

5. Under the terms of a will, Blackacre is left to T for life with remainder to R. Believing that he is the owner in fee, T goes into possession and pays off a \$2000 mortgage which has matured. He then obtains a \$4000 unsecured loan from the Shark Bank on the representation that he owns Blackacre in fee without encumbrances. With the proceeds of the loan, plus \$4000 of his own money, T erects a house on the land which enhances its market value by \$7000. T then dies insolvent. What are the rights of the parties?

ESSAY SECTION

TIME: Two hours and forty minutes.

IMPORTANT: Do not write your name on either the question sheet or the examination booklet.

DIRECTIONS: Write plainly and in ink. You are limited in space to two and one-half pages for each question. Nothing more will be graded. Please return the question sheet with your booklet.

1. (a) Carmen Laboratories manufacture hair dye and sell their products through, among other stores, Anabel et Cie., an exclusive cosmetics shop. X, a woman of 60, entered the Anabel shop and asked for a package of "Carmen 104," but that number was out of stock and she decided on "Carmen 105," described by the sales girl as being a little darker shade but containing the same ingredients as 104. X then went to the house of Mrs. Kelly, a friend who always did X's hair although she was not a licensed hairdresser, and had the dye applied. X and Mrs. Kelly opened the package and read all of the following instructions which appeared in printed form on the box:

"CAUTION. This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to the accompanying directions should first be made.

"THE PRELIMINARY OR PATCH TEST. Medical science has established the fact that a susceptible person may be allergic to even the simplest product. Of the millions of people using hair coloring, a limited few may be allergic or hypersensitive to it. The common method used by medical authorities in detecting those hypersensitive persons is by a preliminary or patch test. Therefore, before contacting or using this product, a test in strict accordance with the following directions should be made before every application of this product." [Instructions regarding the procedure to be used in the patch test followed.]

Mrs. Kelly applied the dye to X's head with a toothbrush, and no patch test was made by them at this time. That night X's head began to burn and within a few days she was hospitalized with sores throughout the scalp area. Medical evidence established a causal connection between the contact with the dye and her condition. She was prevented by this illness from working for about a year. Within the proper period and after giving reasonable notice to the defendant, X brought suit against Carmen and Anabel for breach of warranty of quality. You may assume that testimony on the trial besides establishing the facts set out above also showed that X had been using Carmen hair dye for several years and that she had last used Carmen 104 and had had no trouble. X was unable to recall, when questioned, whether she had ever had a patch test for Carmen hair dyes, but asserted that since she had never had trouble before, she saw no need for one. X testified that the dye had practically eaten away the toothbrush used to apply it. Discuss the disposition that American courts would be likely to make of X's suit.

(b) Suppose the facts are the same as in part (a) above except that instead of merely having the dye applied to her head, X also applied some of the Carmen hair dye to the head of her daughter, Lurlene, on the same night it was applied to X's head, with the same disastrous result. Lurlene did not even see the box enclosing the bottle of dye and had had no experience with the product at all. What disposition should be made of Lurlene's suit against Carmen and Anabel for breach of warranty of quality?

(c) Suppose the facts are the same as in part (a) above except that X purchased the Carmen dye from the Owl Drug Store, a self-service merchandising business, by simply selecting it from the counter and paying the cashier. What disposition should be made of X's suit for breach of implied warranty against Carmen and the Owl Drug Store?

2. In January 1959, S, a licensed used car dealer, sold a 1957 Buick to B for a time price of \$1500, with \$300 paid on delivery and the remaining \$1200 to be paid in \$100 installments over twelve months. The contract of sale was labeled "retail installment sale contract." Before the first installment became due, X notified B that he owned two of the tires on the auto, having previously sold them on conditional sale for \$30 each to S, who had failed to pay for them. When S refused B's demand to settle with X for the tires, B surrendered the tires to X. Furthermore B found that the block of the Buick was cracked at the time of the sale.

(a) Suppose B sues to rescind the contract and take back his down payment due to difficulty over the tires. The parties stipulated that it would cost \$35 to replace the two tires. What judgment should a court render? Explain.

(b) Suppose B sues S for breach of implied quality due to the condition of the block. Suppose S proved that the condition of the block was not observable unless the engine was torn down and that it was not the custom of automobile dealers to inspect used cars this thoroughly. What result? Why?

(c) Suppose the sale contract said, "No warranties, expressed or implied, representations, promises or statements have been made by the seller unless endorsed hereon in writing." In fact, the written contract referred to above contained no warranties. What effect would this clause have on your answers in (a) and (b) above?

(d) Suppose the sale contract indicated that \$200 of the \$1200 balance was a finance charge. Is this a violation of the Illinois usury statute? Is this a violation of the Illinois Retail Installment Sales Act? Assuming it is a violation of the usury statute, what would the penalty be?

3. Answer the following question on the basis of the Uniform Trust Receipts Act:

(a) X Company is the American distributor of the Cheeta brand of foreign sports cars; Y is the local wholesale distributor of this auto. Assume that X and Y have filed a statement of trust receipts financing and that Y has given X a trust receipt on a certain auto as security for X's loaning Y the money to purchase the vehicle from X. Assume further that X has forbidden Y to sell without X's consent but has allowed Y to keep the auto on the showroom floor. Is X's security interest under the trust receipt valid as against the following parties:

(i) A creditor of Y who attached the automobile on which Y had given the trust receipt? Explain.

(ii) A retail dealer who purchased the automobile on which Y had given the trust receipt for value and who had no knowledge of the limitations on Y's power to sell? Explain.

(b) M, manufacturer, delivered an automobile to D, dealer, on July 1. The transaction was financed by F, finance company, which took a trust receipt on the automobile, executed on July 1.

(i) Suppose C, a creditor of D without notice of F's interest under the trust receipt, attaches the auto in D's possession on July 25. F did not file a statement of trust receipts financing until August 5. Is F's security good against C? Explain.

(ii) Suppose Z Bank advanced money to D on July 5 and D pledged the auto to them, giving up possession on the same day. On August 2, F filed a certificate of trust receipts financing. Is F's security interest good as against Z? Explain. Would your answer to this question be different if F had filed the certificate on July 10? Explain.

4. Turner is proprietor of a jewelry store where he sells new jewelry and watches and both sells and repairs used jewelry and watches.

(a) Suppose O brings a watch to Turner to have it repaired. Turner wrongfully sells the watch to X, a BFP. As between O and X, who is entitled to the watch under the USA? Under the UCC? Explain briefly the theory behind these rules.

(b) Suppose B purchases a watch from Turner but leaves it with the dealer to have his name inscribed on it. Turner then wrongfully sells it to X, a BFP. As between B and X, who is entitled to the watch under the USA? Under the UCC? Explain briefly the theory behind these rules.

(c) Suppose S, a wholesaler, entered into the following agreement with Turner concerning some jewelry: "The goods sent to you /Turner/ are sent to you for your examination only to be held by you at your risk of loss, it being distinctly understood that the title shall remain in S Company. Should you desire to purchase any of these goods, no sale shall be consummated until S Company has approved."

(i) Turner goes bankrupt. Is S entitled to the goods covered by this agreement and as yet unsold, under the USA? Under the UCC?

(ii) Turner's creditors attach the goods. Should they prevail over S under the USA? Under the UCC?

FINAL EXAMINATION IN SALES (Law 337)

First Semester 1959-1960

Professor Whiteside

TIME: 3 1/2 HOURS

Note: Omit one of Questions 4, 5, and 6.

1. Central Hardware Company advertised a ladder sale in a newspaper, with the following in large type:

"Sensational Factory Purchase of

'SAFETY FIRST'

LADDERS

In designing our ladders the prime consideration was SAFETY -- and that's exactly what you'll find in these splendid ladders!"

The stock of ladders was acquired by Central Hardware directly from Safety First Ladder Manufacturing Company. Three types of ladders were described as the "2-in-1", designed for use both as a stepladder and as an extension ladder, with the further language, "mighty strong and durable!"

Turner, a painting contractor, took the advertisement to Central Hardware, pointed out the "2-in-1" in the ad, asked whether it would be good for cleaning wallpaper. The salesman said, "I think that would be exactly what you want," that "they were tested to 300 pounds or better." Turner said, "I don't know anything about wood; I will rely on your judgment," and was told, "It is very good wood." Turner bought the ladder, and his employee, Sam. Jones, was injured when it broke under his weight (150 lbs). The cause was a defective siderail consisting of cross-grained wood. The defect was not discoverable upon careful examination. Discuss the rights of both Jones and Turner against Central Hardware Co. and Safety First Ladder Manufacturing Company.

2. B came into S's general clothing store and said that he heard that S wanted to sell his entire stock of shoes. S said that was true but the price would be \$1000, "strictly cash down on the barrel head, possession to be taken on payment." B said, "All right, here's my check" (on an out-of-town bank). After considerable talk, B persuaded S to take the check, and S wrote B a receipt, as follows: "Received of B, check in the amount of \$1000, full amount due for all shoes in store, if check is good." The next day B, with the help of S, stacked all the shoes in the rear of the store. While S was out to lunch, B sold T the shoes for \$1200 (which T paid B \$400 in cash, \$400 in cancellation of an old debt owed by B to T, and the remaining \$400 by a one-year promissory note at 6%). T had previously had satisfactory dealings with B and believed B's story that he had bought the shoes from S. S promptly sent the check to the bank for collection but it came back five days later marked "insufficient funds." Meanwhile B had disappeared and T had carried the shoes to his place of business fifty miles away. S now sues T for conversion of the shoes. Give contentions of both parties and the court's holding.

3. In August 1959 the following instrument was executed in Peoria by Millikan Chevrolet Agency to First National Bank:

"RECEIVED FROM THE FIRST NATIONAL BANK on behalf of Millikan Chevrolet Agency merchandise specified in bill of lading No. _____, Interstate Trucking Co., covering four Chevrolet automobiles /serial numbers/ which we hereby agree to hold in trust for the account and benefit of said bank, with power to sell the same and in case of sale to pay over to it forthwith the proceeds thereof, consisting of cash or conditional sales obligations, as security for any sums due or to become due said bank on account of purchase of these automobiles and also as security for any other indebtedness from us to said bank.

"The delivery of the automobiles shall not operate as a waiver of the title retained by said bank in the automobiles, and the bank may at any time enter and resume possession.

"Until the sale of any automobile covered by this receipt, we agree to keep the same insured against loss by fire, in the name of said bank, and to deliver the policies of insurance to it.

Millikan Chevrolet Agency"

Five months prior to the execution of the above instrument, First National Bank had filed in the Secretary of State's office proper statements of trust receipt financing of Millikan's stocks of automobiles, but the above instrument was not recorded anywhere.

(a) If prior to receiving the automobiles from the Trucking Co., Millikan Chevrolet Agency pledges the bill of lading with the Citizens Bank as security for a new loan, what are the rights between First National Bank and Citizens Bank? What additional fact or factor, not stated, is required for your answer?

(b) Assume that Millikan Chevrolet Agency receives the four automobiles from the Trucking Co. and delivers the bill of lading to the Trucking Co. for cancellation, and moves the automobiles to its showroom. One of the Chevrolets was sold for cash to Adams. Another was sold to Baker under a conditional sales contract, which Millikan assigned to Peoples' Finance Company as security for a loan by Peoples' to Millikan. The remaining two automobiles were sold to Mercantile Finance Company for use on the job by two of Mercantile's employees; Mercantile gave Millikan as consideration \$1000 in cash plus two used Plymouth automobiles. Millikan then gave a trust receipt on the two Plymouths to Commercial Trust Company as security for another loan, and Commercial filed the statement of trust receipt financing with the Secretary of State. Then Millikan filed his petition in bankruptcy, adjudication was had, and a trustee in bankruptcy appointed. Discuss very briefly the rights of First National Bank against the following parties:

- (1) Adams, with regard to the Chevrolet sold to him;
- (2) Peoples' Finance Company, with regard to the conditional sales contracts assigned to it;
- (3) Mercantile Finance Company, in respect to the two automobiles sold to it;
- (4) Commercial Trust Company, in respect to the two Plymouths;
- (5) Millikan's trustee in bankruptcy, as to funds on hand.

4. A sold to B 100 bushels of wheat in C's warehouse at \$1.00 a bushel. C had in storage 1500 bushels of wheat of the kind and grade which A sold to B, and A had receipts for 200 bushels held by C. The entire amount was mixed together in C's storage bins. B gave to A his time draft for the agreed price and A gave B a delivery order on C for 100 bushels. A called C on the telephone, told him about the delivery order, and C said, "All right." B went into bankruptcy before the draft was due or paid. A, upon hearing of B's bankruptcy, told C that the delivery order was revoked and to please hold the wheat according to his directions. B's trustee in bankruptcy brought replevin for the 100 bushels of wheat, tendering the amount of the draft, a crop shortage having caused the market value of the wheat to increase about 50%. The trustee joined both C and A in this action. A, however, sold the 100 bushels to X at \$1.50 a bushel, and gave X a delivery order and received the cash. Hearing of this resale, B's trustee in bankruptcy amended his complaint to seek the proceeds of the sale, and tendered the amount of the draft for the price. What is the court's holding as between A and B's trustee? Can B's trustee hold C or X?

5. (a) A owned a wagon which he agreed to sell to B for \$60. It was agreed that B was to pay for the wagon and take it away within a week and that he was not to have it until he had paid for it. Exactly what transpired between A and B at the time of the bargain is not too clear, but A says that B offered \$60 and A replied, "It's a deal," and the two shook hands and B departed. Two days after this agreement, A's barn was struck by lightning and the wagon burned. What, if anything, may A recover from B?

(b) S harvested his potato crop of some 12 to 14 tons and, after B had inspected them in several piles in the field, it was agreed that S would sell and B would buy the entire crop at \$2.80 per hundredweight. S was to take them as they were in the field and have them weighed on designated public scales, and B was to pay according to the weight tickets. It was understood that B was to pay for the potatoes he took one day before he loaded any potatoes. The same night as the agreement and before any potatoes were taken by B, there was a very unusual cold wave, which froze the potatoes and made them practically worthless. B refused to take the potatoes and S has filed this action for the price. Please decide and discuss briefly.

6. The Great Atlantic and Pacific Tea Co., Chicago Branch ("A & P") bought its fall supply of cranberries from Ocean Spray Cranberries, Inc., of the State of Washington, under an agreement calling for shipment of 10,000 pounds per week, to be shipped by rail from Seattle to Chicago under contract terms, the substance of which may be condensed as follows: "Place of delivery, Chicago; terms, net cash upon receipt of shipping documents with draft drawn by shipper upon A & P; price, 8 cents per pound shipping weight; to be shipped F.O.B. cars Chicago, C.I.F. Chicago; inspection at Chicago." The shipment of the week of November 1 arrived and was paid for and distributed by A & P to its retail grocery stores. Some of this shipment was sold at retail to the public, resulting in some complaints and returns, and the remaining portion was later taken from the shelves. The shipment of the week of November 8 was put on board cars of the Union Pacific Railroad at Seattle, with bill of lading to the order of Ocean Spray Cranberries, Inc., but indorsed in blank and sent by air mail to Ocean Spray's agent in Chicago, together with draft upon A & P, certificate of insurance adequate to cover the shipment and the invoice. Upon arrival in Chicago the cranberries were impounded by order of the Chicago Board of Health, acting under advice from federal authorities that Washington cranberries were potentially dangerous to human beings because sprayed with aminotriazole, a chemical shown to produce cancer in rats. In fact these particular cranberries had not been so sprayed. A & P refused to pay the draft, and sued Ocean Spray for damages. Ocean Spray counterclaimed for the price as represented by the amount of the draft. What decision and why?

FINAL EXAMINATION IN SALES (Law 337)

Summer Session 1960

Professor Hawkland

Length of Examination: 2 Hours

Instructions: This is not an open-book examination, but students may use the Statutory Supplement which was prepared for use with Bogert and Britton's Cases on Sales.

All questions count equally.

I. Sam told Bill that he owned a threshing machine that was about to make me a mint of money." Bill expressed an interest in the machine, and told Sam he would like to buy it. Sam explained that the machine was in use in the western part of the state, some distance away, but that he was willing to sell it to Bill "sight unseen." Sam said, "Since the machine is used, I can give no warranties. But the last I knew, it was in pretty good condition." Bill made a telephone call to the place where the machine was located, and he received an accurate report that the machine was working well. Bill then offered to buy the machine for \$5,000.00. Sam agreed to sell, and a bill of sale was prepared and signed by both parties. The bill of sale contained no provision concerning delivery of the machine, but it did contain a stipulation which read as follows: "The seller makes no warranties, express or implied." Bill handed over the \$5,000.00 to Sam.

A week or so later, Bill asked Sam when he was going to bring the machine to him. Sam expressed amazement and told Bill that it was up to Bill to go out and get it. Bill rejected this suggestion and finally told Sam, "I'll see you in court about this."

Bill started an action to rescind the sale and recover his price. At a pre-trial conference it was determined that the machine was encumbered by a chattel mortgage which was duly recorded at the time of the sale by Sam to Bill. The mortgage secured a loan of \$4,500.00 which Henry James had made from the National Bank. James later sold the machine to Sam and concealed the fact from Sam that the machine was mortgaged. It was also revealed at the pre-trial conference that Sam had never made a profit with the threshing machine and had no reason to think he could ever make much of a profit with it.

How should the Bill vs. Sam case be decided?

II. Ennui was in the business of financing dealers in their purchase of new appliances for resale. Troy was such a dealer. On March 29, 1958, Ennui filed with the Secretary of State a "Statement of Trust Receipt Financing," designating Troy as trustee and the goods as "new refrigerators and ranges." On April 11, 1960, the manufacturer of refrigerators for which Troy was the dealer, in accordance with past practices, shipped ten new refrigerators to the city where both Troy and Ennui were in business. The shipment was by a negotiable bill of lading made deliverable to the order of the manufacturer. The bill of lading, with a draft drawn on Ennui, was sent to Ennui's bank, and Ennui was notified of the shipment. Before the arrival of the refrigerators on April 15, Ennui procured trust receipts from Troy covering them. Ennui paid the draft by a check certified by his bank and payable to the manufacturer. He received the bill of lading indorsed in blank by the manufacturer and surrendered it without further indorsement to Troy on April 15. Troy had procured a loan from Morgan Bank on March 2, 1960, giving as security a chattel mortgage "on all property now owned or hereafter acquired" by Troy in connection with his business. The mortgage had been recorded on the same day. On April 16 Troy took the bill of lading to the Morgan Bank and, on the strength of his new acquisitions, the bank made new advances to Troy under its mortgage, which Troy used to pay some old debts. April 20, Crush, a judgment creditor of Troy, levied upon

the bill of lading and the sheriff took it into his possession. Learning of this, Ennui stopped payment on his check. He then brought suit against Crush to enjoin sale under the execution. Morgan Bank intervened to have its mortgage lien declared prior to the interests of both Ennui and Crush. What result in Illinois?

III. Burns, a retail clothing merchant, and Smith entered into an oral contract under which Smith agreed to manufacture some suits of clothing for Burns for a price of \$2,000.00. Under the contract Smith agreed to place buyer's labels and lot numbers in the suits and to deliver them on November 1. Burns agreed to receive the suits and pay for them at the same time. Smith manufactured the suits and delivered them on November 1. Burns was ready to accept them, and he tendered to Smith his own personal check in the amount of \$2,000.00 drawn on a distant bank. Smith took exception to the check, alleging that it would take two weeks to collect it, and he insisted that Burns pay cash. Burns told Smith that it would take a few days to raise the cash. To this Smith replied, "When you get the cash, let me know. But I can't wait very long."

Burns began the process of raising the cash. On November 8, Smith, not having heard from Burns, sold the suits to Bilko for \$1,600.00. Smith made this sale because he feared that Burns was insolvent, due to a credit report which showed Burns's economic position to be marginal, and because he feared that he could not get another good offer for the suits. Smith gave no notice to Burns about his intention to resell, nor the time or place of the resale.

Smith now brings an action against Burns for the \$400.00 deficiency. Decide the case.

IV. (Short-answer question. Give reasons for your answers, but be brief.)

Sam Seller and Bill Buyer made an oral contract for the sale to Buyer of a set of sterling silver, "price to be set by Seller on delivery." Seller immediately wrote to Buyer, "This will confirm our oral agreement of yesterday for the purchase of silver [giving terms]. [Signed] Seller." Buyer did not reply to this letter, but one week later he went to Seller's place of business, examined the set of silver, and said, "I accept this silver. Will you hold it for me for one week? I am presenting it to my wife on her birthday, and I don't want to take it home until then." Seller agreed to do so. When the week was up, Buyer refused to go through with the deal, and, in a letter to Seller, Buyer wrote, "I have been advised by counsel that our agreement [giving terms] is not binding, and therefore will not proceed therewith. [Signed] Buyer."

1. Is the agreement binding under the Uniform Sales Act? Under the Uniform Commercial Code?

2. Suppose the goods were destroyed through no fault of Seller or Buyer after Buyer had inspected them. Who would have the risk of loss under the Uniform Sales Act?

3. Suppose that creditors of Seller had attached the goods during the week that Seller held them for Buyer pending Buyer's wife's birthday. Would the creditors acquire an interest in the goods superior to Buyer's interest in Illinois? How about in states that have enacted the Commercial Code?

FINAL EXAMINATION IN SOCIAL LEGISLATION (Law 358)

First Semester 1958-1959

Professor Flering

TIME: THREE HOURS

PART I

- I. (15 points) Assume that the 1959 Illinois Legislature passes a Fair Employment Practices Act which contains the provisions included in the attached extract. Consider the following problem under this legislation:

The Arabian Knights Oil Co. maintains offices in the city of Chicago, where it has, and has had for many years, hundreds of clerical employees. It also has extensive holdings in Saudi Arabia, for which it hires technicians. The Kingdom of Saudi Arabia denies visas for work, trade or travel within its territory to all persons of the Jewish faith. It is also known that the United States Department of State is engaged in delicate negotiations with Saudi Arabia which are thought to be of extreme importance to the policy of the Western Allies in the Near East.

Arabian Knights Oil Co. is engaged in hiring, both for its Chicago office and for its facilities in Saudi Arabia. Because the Kingdom of Saudi Arabia will not issue a visa to a person of the Jewish faith, the Company decides it cannot hire such a person for its facilities in that country. Moreover, certain of its technical employees in Chicago, and the chief receptionist, have more or less regular contact with visiting Arab dignitaries. For that reason and because it is fearful that its facilities in Saudi Arabia will be nationalized, the Company feels that it must not have a person of the Jewish faith in any such positions in Chicago. Pursuant to the above policy the Company, in interviewing candidates for Saudi Arabian positions, and for the sensitive positions in Chicago noted above, asks all candidates about their religious faith and national origin. X, a highly qualified technician of the Jewish faith, is immediately disqualified for a job in Saudi Arabia. Y, a stunning and experienced receptionist, is likewise disqualified for the receptionist's job in Chicago because she is of the Jewish faith. Both complain to the Illinois Equality of Employment Opportunity Commission.

After a hearing the Commission determines that the Company is an employer within the meaning of the act, and that it has committed an unfair practice with respect to both X and Y. It thereupon orders the Company to post a notice saying that it will no longer discriminate, and to hire X and Y even if this means that those who have been hired for the positions must be discharged. The Company refuses to comply with any part of the order, and the Commission seeks enforcement in the court. What result and why?

Assume the Company, instead of refusing to comply with the order, takes the following action:

1. Agrees to post the order as directed.
2. Agrees to consider Y, since it has not yet hired a receptionist, along with other candidates for the job. The Company ultimately takes Z in preference to Y. Z is also a stunning and qualified receptionist. The Company frankly states that one of her "merits" is that she is not of the Jewish faith and can therefore meet visiting Arab dignitaries better than Y.
3. Hires X for the technician's position in Saudi Arabia, but when that Kingdom declines to issue a visa to X, discharges him "for cause."

X and Y both complain to the Illinois Equality of Employment Opportunity Commission about their treatment. What result and why?

II. (20 points) Cable Company manufactures wire of all kinds. It is located in Illinois, and its normal work force is 400 men. The following incidents took place during 1958:

(1) B was employed in the wire-coating department. The odor of shellac in this department often became so strong that employees were authorized to go into the next room and stand next to the windows for some fresh air. Employees were forbidden to go outside the building because there was a continuous movement of trucks in the company drive which was deemed dangerous. On the occasion in question the fumes became very strong and B ignored the company rule and stepped outside the building. While he was standing there, a jet plane from a nearby air base went out of control and came screaming into the company drive. B was not hit but he became hysterical. Thereafter, although he was in no way impaired physically, he was never again able to work around noisy machinery because he was reminded of the jet crash and became hysterical. Since he had had no training for other than a production job, he finally became a night clerk at a local hotel at a salary of one-third of what he had earned at Cable Company. Discuss and decide B's claim, if any, against the Company.

(2) While B was hysterical, in the above incident, he rushed back into the building, picked up an iron bar, and smashed it into C's leg. C was sitting at a bench working at the time, but the blow broke his leg so badly that he was permanently crippled. C was able to return to work without his leg's bothering him because he had previously broken both arches in the employ of another company and had therefore been given a "sit-down" job at Cable Company. C now wants to know what rights he has against Cable Company and/or B. Discuss and decide.

(3) E is a skilled machinist who is an employee of Metal Co., located in St. Louis, Missouri. He has been sent to Cable Company with a new machine which Cable has purchased from Metal, to help install the machine and to teach an operator how to make it work. While working on the machine at Cable Company, E suddenly drops dead of a heart attack. A post-mortem reveals that E has been suffering from acute heart disease. The doctor states that E's death was in no sense brought on by the work he was doing at the time of death and that there was an equal probability that he would have died in his sleep. E is unmarried, but he has a dependent mother who would like advice as to her rights, if any, against Cable Company and/or Metal Co.

(4) F worked from 1956 to 1958 for Atomic Energies, Inc., which was located in southern Illinois and which experimented in the production of atomic power. Because he wanted to be nearer home, he left Atomic Energies, Inc., in 1958 and came to work for the Cable Company. He was given the usual physical examination and started work. In the fall of 1958 F's health began to deteriorate and he was finally hospitalized, where he was found to be suffering from atomic radiation. After spending three months in the hospital, F was released but was told that he would never again be able to do more than light work. F now comes to you for advice with respect to his rights against Cable Company and/or Atomic Energies, Inc. Explain your advice.

III. (20 points) X brewery, doing business in the State of Illinois, employs 500 people. During the year 1959 the following incidents took place:

(1) B, who had worked in the loading room for fifteen years and had been known as a competent employee, was called before a Congressional Committee and asked whether he had ever been a Communist. B refused to answer and the committee

has not yet decided whether to cite him for contempt. Following the committee hearing B was called into the Personnel Office and asked the same question. He refused to tell the Company whether or not he was, or had been, a Communist. Thereupon he was discharged. B then filed a claim for unemployment compensation. He indicated that he had been discharged for refusing to say whether he was, or ever had been, a Communist, and he likewise refused to give this information to the UC office. B duly registered for other employment and held himself out as ready and willing to work when and if another job became available. Discuss the problems that are involved with respect to B's rights to unemployment compensation and decide the issue.

(2) Y union has a contract with X brewery under which X may not employ new people while any qualified employee of X is laid off. During a period of extra work X hired C, who knew of the above provision in the contract. Shortly thereafter a layoff in another section of the brewery made qualified employees available for work and one of them bumped C out of his job. C now claims unemployment compensation but the brewery claims that C is not qualified because his unemployment is not attributable to the company. What are the arguments which will be raised, and what result would you predict?

(3) D was a maintenance painter at the brewery. During the 1958 recession the Company was not able to provide work for him and he was laid off. At the same time, however, it was made known to D that because the company wished to keep him in its employ so that he could later be put back on painting, it would offer him a job as a janitor in its downtown office building. D's pay as a painter was \$3 per hour. The janitor's job paid \$1.95. D lived outside the city, in the direction of the brewery. The latter was ten miles from the heart of the city, where its office building was located. D declined to accept the janitor's job even though at the time there was a great deal of unemployment locally and the business agent for the painters' union advised him that there were 100 painters out of work and looking for jobs. D filed his claim for unemployment compensation and indicated that he was available for work. What problems are involved in deciding whether D is entitled to unemployment compensation, and what is your decision?

(4) E, who had worked for the brewery for ten years, was extremely popular with his fellow-employees and had been very active in the union. At the age of 40 he was suddenly stricken with an arthritic condition which made it impossible for him to continue working. The affliction was not alleged to be work-connected and no claim for workmen's compensation was filed. The brewery, partly out of sympathy for E, who had five children, and partly to capitalize on his popularity, suggested that E set up a public relations business in which his principal function would be to publicize the brewery among the working people of the city. He would do this through his entree to union meetings. E liked the idea. It was agreed that the brewery had no control over him whatsoever, that he could come and go as he pleased, that his services, when performed, would be entirely in union halls, and that he could accept or reject other clients as he pleased. For this the brewery would pay him an annual fee of \$2000, but it would in no way direct his efforts, check on them, furnish him materials, or provide office space. E worked under the arrangement for two years. At that time the brewery found that the 1958 recession was forcing it to cut back on expenses and the retainer for E was eliminated. E then filed a claim for unemployment compensation. What considerations are involved in deciding his claim, and what will the result be?

APPENDIX TO PART I

SOME EXTRACTS FROM ASSUMED ILLINOIS FAIR EMPLOYMENT PRACTICES ACT

Section 1. Declaration of Policy. Denial of equal employment opportunity because of race, color, religion, national origin or ancestry and the consequent failure to utilize the productive capacities of individuals to the fullest extent deprives much of the population of the State of earnings necessary to maintain a reasonable standard of living, thereby causing many persons to resort to public charity, and often causing conflicts and controversies resulting in grave injury to the public safety, health and welfare.

Therefore it is hereby declared to be the public policy of this State that the right to equal employment opportunity is a fundamental right that should be protected by this State by law. Denial of this right is hereby declared to be against the public policy of this State.

Section 2. Definitions. . . . (d) "Employer" includes all persons employing more than twenty-five persons within the State within each of twenty or more calendar weeks, within either the current or preceding calendar year, except that the term "employer" shall not include any religious, fraternal, sectarian, educational or charitable corporation, association or club exclusively social if such corporation, association or club is not organized for profit.

Section 3. Unfair Employment Practices. It shall be an unfair employment practice:

- (a) For an employer, because of the race, color, religion, national origin or ancestry of any person, to refuse to hire, to segregate, or otherwise discriminate against him with respect to hire, tenure, terms and conditions of employment; . . .

Nothing in this Act shall preclude an employer from selecting between persons of equal merit and ability, or from discharging or taking disciplinary action against an employee for cause. . . .

Section 5. Illinois Equality of Employment Opportunity Commission. (a) There is created hereby the Illinois Equality of Employment Opportunity Commission. . . .

Section 6. Powers and Duties of the Commission. The Commission shall have the following powers and duties: . . .

- (d) To adopt, promulgate, amend and rescind rules and regulations.
- (e) To receive, cause to be investigated by its staff, and consider charges of unfair employment practices and act upon them. . . .

Section 8. Procedure. . . . (e) When all the testimony has been taken the Commission shall determine whether the respondent has engaged in or is engaging in any unfair employment practice. The Commission then shall state its findings, and if it finds against the respondent, shall issue and cause to be served on such respondent and the complainant an order requiring such respondent to cease and desist from such unfair employment practices, and to take further affirmative or other action as is required to enforce this Act, including but not limited to posting of the order, hiring, reinstating, or upgrading of employees and admission or restoration to union membership. . . .

APPENDIX TO PART I - continued

Section 10. Judicial Review. Any complainant or respondent may apply for and obtain judicial review of an order of the Commission . . . in accordance with the provisions of the "Administrative Review Act"*, . . .

Section 11. Judicial Enforcement. (a) Whenever it shall appear that any person has violated an order of the Commission . . . the Commission shall commence an action . . . alleging the violation, attaching a copy of the order of the Commission and praying for the issuance of an order in the nature of a writ of mandamus, directing such person, his or her or its officers, agents, servants, successors and assigns to comply with the order of the Commission.

*The Administrative Review Act provides: "The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct."

NAME _____

NO. _____

FINAL EXAMINATION IN SOCIAL LEGISLATION (Law 358)

First Semester 1958-1959

Professor Fleming

PART II

IV. (25 points) The following objective questions may be answered by circling either the T, for True, or the F, for False.

- T F 1. Interpretation of the coverage of the Social Security Act has been complicated by the fact that there is no definition of the term "employer" or term "employee" in the Act.
- T F 2. The 1956 amendments to the Social Security Act provided for the payment of disability benefits to all persons who could prove that they were permanently and totally disabled.
- T F 3. Illegitimate children of a fully insured individual may never claim benefits under the provisions of the Social Security Act.
- T F 4. X, a fully insured employee, is the sole support of his mother. X contracts "Lou Gehrig's" disease, and dies a lingering death after 11 months in the hospital. During the last three months of this period, Y, X's sister, took over support of the mother. On X's death his mother is not entitled to benefits resulting from his coverage under the Social Security Act.
- T F 5. After X's death his administrator found that X had saved six primary benefit checks without cashing them. At the same time a final check came in, covering a period which extended ten days beyond X's life. The administrator was entitled to cash all of the checks.
- T F 6. Under the 1958 amendments to the Social Security Act, the trustee of OASI funds is entitled to maintain a ratio of investment of such funds of 60% government bonds and 40% private "blue chip" stocks.
- T F 7. Under both private pension plans and OASI, once the individual has fulfilled all the requirements for receiving a pension, he will receive the pension regardless of what work or earnings he has thereafter.
- T F 8. The Australian old age pension program is based upon a means test.
- T F 9. The Internal Revenue Code provides that in order for a private pension plan to be tax exempt, it must require both a minimum age and a minimum period of service in order for the individual to be eligible for benefits.
- T F 10. The Internal Revenue Commission will approve differences in contributions and benefits under an integrated and correlated pension plan, providing higher paid employees will not receive proportionately greater benefits than lower paid employees.
- T F 11. Though the Labor-Management Relations Act of 1947 has been held to require bargaining over pensions, the company may unilaterally change the level of benefits thereunder if the plan is non-contributory.
- T F 12. Some courts have held that a competent employee may not be required to retire at age 65 simply because the unilateral company retirement policy so provides if the employee is protected by a collective bargaining contract which authorizes discharge only for "cause."

- T F 13. The Welfare and Pension Plans Disclosure Act of 1958 was passed as the result of Congressional investigations which showed abuses in the handling of such funds in recent years.
- T F 14. Supplementation of OASI benefits by private pension plans is no longer legal since the 1958 amendments to the Social Security Act.
- T F 15. Some states permit an employee who is retiring on pension benefits to draw unemployment compensation during this same period if he registers and is looking for work.
- T F 16. A distinguishing feature of public assistance, as compared with OASI benefits, is that the former is based on a means test.
- T F 17. The primary reason why old age assistance benefits vary so widely from state to state is that some states, like California and Florida, have so many more old people than others.
- T F 18. It is possible for a recipient of OASI benefits to collect old age assistance also.
- T F 19. President Eisenhower's re-insurance program, which was submitted to the Congress in 1952, would have protected the financial stability of private pension plans by permitting the parties to re-insure benefits above and beyond those provided under OASI with the federal government.
- T F 20. A major gap in the American social insurance field is that the employee who is unemployed because of illness is ineligible for unemployment compensation except in a few states.
- T F 21. OASI benefits are now kept abreast of inflationary trends by adjusting them according to the cost-of-living index put out by the Bureau of Labor Statistics.
- T F 22. The joint federal-state system of unemployment compensation requires the federal government to pay each state for the cost of administering the program.
- T F 23. The "merit rating" principle, which is widely used under unemployment compensation laws, is popular with industry groups because it has the effect of reducing taxes.
- T F 24. The reason members of the Musicians' Union have worked out stand-by provisions in their collective bargaining contracts which require payment for unnecessary work is that musicians are not covered by the unemployment compensation act.
- T F 25. In almost all foreign unemployment compensation systems, contributions are made by both employers and employees.

V. (20 points) The following objective questions may be answered by circling either the T, for True, or the F, for False.

- T F 1. The fellow-servant rule at common law, which made recovery for a work-incurred injury difficult, meant that one had to show that a fellow-worker caused the accident before the employer could be held liable.
- T F 2. State health and safety statutes, such as are found in Illinois, usually make non-compliance with the act negligence per se.
- T F 3. Under the Illinois Scaffolding Act, the employer cannot escape liability for willful violation of the act if the scaffold is unsafe even though he thought it was safe and had in fact inspected it.
- T F 4. The Illinois Minimum Fair Wage Standards for Women and Minors Act is now largely inoperative because of legal difficulties having to do with findings of fact and details of issuing a wage order.
- T F 5. Plant safety is never a matter for collective bargaining because it is controlled by state statutes.
- T F 6. The State of Illinois has supplemented its workmen's compensation act by establishing an excellent rehabilitation program.
- T F 7. The "agreed-bill" process for amending Illinois workmen's compensation and unemployment compensation statutes means that the Republican and Democratic parties appoint a small sub-committee which reaches an inter-party agreement on changes, which agreement is then adopted.
- T F 8. In order for an employer to get a patent on an invention by one of his employees, the employer must show either that the inventor was engaged specifically to exercise his inventive faculties for the employer, or that the invention was conceived and developed during working hours with the aid of fellow-employees and with the use of the employer's machinery and materials.
- T F 9. Early efforts on the part of states to regulate hours and wages were declared to be unconstitutional on the ground that they impaired the right of the employer and the employee to contract.
- T F 10. The original purpose of the Fair Labor Standards Act was to put more purchasing power in the hands of employees by forcing employers to pay overtime for work beyond 40 hours in a week or 8 hours in a day.
- T F 11. It is sufficient to bring employees under the Fair Labor Standards Act if their employer is engaged in interstate commerce and they are essential to the conduct of his business.
- T F 12. Exempt work under the FLSA is immediately made subject to the act if the employee engages in any covered employment during the same period.
- T F 13. The Belo rule is associated with the 1949 amendments to the FLSA, which made guaranteed annual wage plans exempt from the act when they met certain standards prescribed in the act.

- T F 14. The courts have held that under the National Labor Relations Act, the Congress exercised the full scope of the commerce power, while under the FLSA it did not.
- T F 15. The 5¢ per hour which the automobile companies pay into the trust fund to finance supplemental unemployment benefits is a part of the "regular rate" for purposes of the calculation required under the FLSA.
- T F 16. The FLSA provides for certain exemptions from the maximum hours provisions without at the same time giving an exemption from the minimum wage requirements.
- T F 17. An employee may sue under the provisions of the FLSA in either the state or federal court for unpaid minimum wages and overtime compensation.
- T F 18. The Portal-to-Portal Act, which requires the employer to compensate his employees while engaged in their "principal activity or activities", does not include time spent in changing clothes even where special clothes are required if there is a past practice to the contrary.
- T F 19. Unlike coverage under the FLSA, which in all cases depends upon the activities of the individual employee, the basis for the application of exemptions varies: sometimes it is phrased in terms of the individual's activities; sometimes it relates to the nature of the industry; etc.
- T F 20. An employee is covered by the wage and hour provisions of the FLSA if he is engaged in the production of goods for commerce. Stocks, bonds, bills of exchange, and insurance policies have all been held to be "goods."

NAME _____

NO. _____

FINAL EXAMINATION IN SOCIAL LEGISLATION (Law 358)

Second Semester 1959-1960

Professor Fleming

TIME: 3 1/2 Hours

Each of the five questions has a point value of 20.

I. Employees A, B, and C all work for X quarry in the State of Illinois. In the spring of 1960 they were involved in the following incidents:

While walking to the parking lot at the end of work one day, A was hit by a falling wheel which had become detached from a commercial airliner flying overhead. The plane belonged to the Y company. It did not normally fly over the quarry but because of bad weather the pilot was following a somewhat circuitous route. Mr. A sustained serious but not fatal injuries from the impact of the wheel. However, fellow-employees D and E moved him so negligently after the injury that complications were caused which resulted in A's death. What rights, if any, have A's heirs against: (1) X company, (2) fellow-employees D and E, and (3) Y company? Explain.

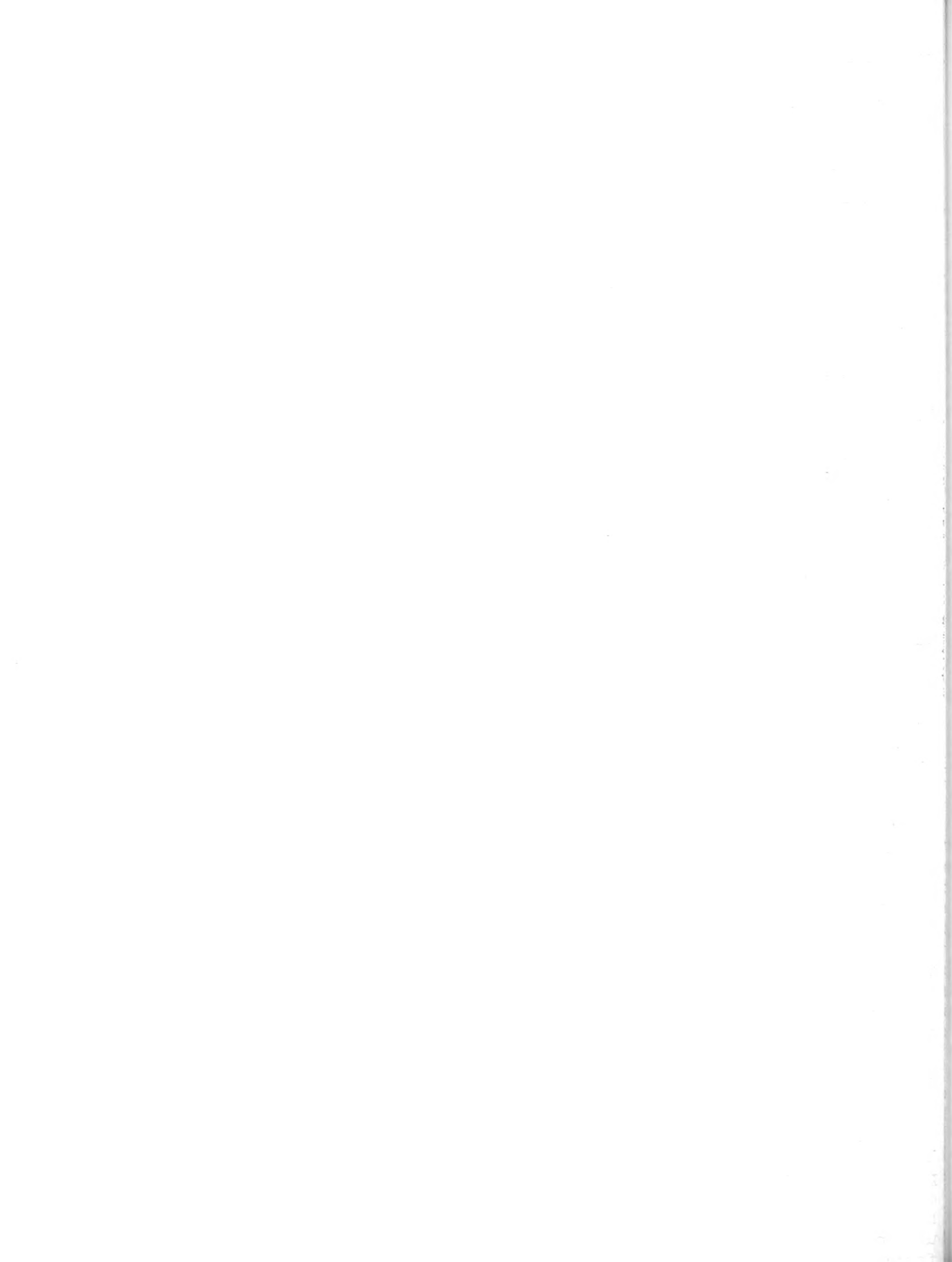
During the midmorning break B, who held a timekeeper's job because in an accident on a previous job for another company he had lost his left hand in a punch press, went to a nearby shed to get his thermos of coffee. In complete violation of company rules against drinking on the job, B had laced the coffee with whiskey. While standing in the shed drinking the coffee, B set the thermos down on a metal heater powered by electricity. When he did so a short in the heater was transmitted through the metal thermos to him, with the result that he suffered severe burns. Naturally, the thermos spilled, with the result that everyone knew its contents. B was incapacitated for three weeks as the result of the burns. What rights, if any, has B against X company? Explain.

C drove a truck for X company. In the course of his customer contacts he contracted smallpox from a customer who was himself just coming down with it and who was in a highly contagious condition. C was ill for two months, partly because a chronic silicosis condition contracted at the quarry had left him in a weakened condition to fight smallpox. What claim, if any, has C against X company? Explain.

II. X company is a supplier of door handles and other small hardware for Y auto company. Both companies are located in Illinois and are organized by locals of the International Autoworkers Union. X is not a subsidiary of Y, but there is a substantial overlap among the large stockholders in the two corporations.

Mr. A has been employed at the X company for ten years as a skilled machinist. His hourly rate is \$3.25. Recently his wife contracted a respiratory ailment for the cure of which her doctor thought a year's residence in Tucson, Arizona, would be the only remedy. Six weeks after she had gone to Tucson, A became lonesome and decided to give up his job and join her. Upon arrival in Tucson he registered at the employment service, but found that there were no openings for skilled machinists at the moment. As a matter of fact, the only job then open was that of a night watchman at one of the local banks. The pay was \$1.75 per hour. In preference to taking this A decided to apply for unemployment compensation. How would he go about doing this, what would be his problems in qualifying, and what result do you predict?

Mr. B, a janitor in the X plant, was arrested on a morals charge when he molested an 8-year-old boy. Pending trial he was released on bail. The local newspaper gave a good deal of publicity to the matter, including a statement of the name of B's employer. After that the president of X received many letters suggesting that he fire B. Shortly thereafter B was discharged on the ground that he had brought unfavorable publicity to the company and was disrupting the harmony of the work force. What problems will arise if B applies for unemployment compensation, and



On April 1, 1960, the local union at X plant entered negotiations with the company. By May 1 an impasse had been reached and a strike was called. When informed of the strike, the employees at Y, fearing that exhaustion of the supply of door handles would shut down production at Y, began a calculated slow down. In spite of this tactic, Y laid off several assemblers on the ground that not so many were needed when door handles were in short supply. By June 1 the supply of door handles was so low that Y could continue for only another week. Rather than so continue, Y decided to shut the plant down, hoping that by doing so the local union would bring pressure on its sister local to settle the dispute at X so that production could be resumed at both plants. On June 15 Y decided this was an erroneous tactic, reopened its plant, and recalled all the workers. At the same time X announced that it was terminating all of its employees and would hire replacements. On June 18 the strikers at X placed a picket before the Y plant in an effort to bring pressure through Y on X to negotiate a contract with the union at X. This had the effect of again closing the plant at Y, though there was no violence. Ultimately, on July 1, a new contract was reached with the union at X and both plants went back to work. Because it took the plants a few days to get back in operation, employees were delayed over a period of a week in returning. What unemployment compensation questions are raised in this set of facts, and what answers would you predict?

III. X company is engaged in the business of purchasing wrecked or burned late model automobiles. After stripping the cars of such items as generators and motors, which are sold locally, the residue is sold for scrap metal to Y company, which is located on the adjoining lot. Y buys scrap metal from several sources and then sells it to local manufacturers who use it in the production of their products, most of which are shipped outside the state. X's records show that for the past fiscal year it sold less than 100 tons of scrap metal to Y, and that the receipts from this sale constituted 1.67% of X's total income during this period.

X employs a night watchman at \$50 per week, for 50 hours of work. His sole function is to watch the establishment, including the piles of parts and scrap. Four other employees strip the cars of salvageable parts. They earn \$96 per week, with the understanding that they will work from 40 to 48 hours each week according to the demands of the job. In fact they work more than 40 hours only about half the time. Another man drives a wrecker to pick up automobiles and bring them to the company's yard. He is paid on the same basis as the four salvage men and helps strip cars during his spare time. Finally, there is one skilled machinist who works from 1 to 5 p.m., six days per week, checking over salvaged parts to be sure they are in working order. Since this does not take his full time, the machinist works from 8 to 12 a.m., six days per week, for the Z company, which is located across the street and which is owned and operated by the brother of the man who owns X company. The machinist is paid \$2.25 per hour for each hour worked for both X and Z, and when the demands of either job require more hours on any given day, it is understood that the machinist may continue at the job he is on until it is completed.

During the spring of 1960, the four salvage men and the driver asked for a raise in pay. In response X suggested the following plan: Each man would be guaranteed \$100 per week in return for signing individual contracts which called for a basic hourly rate of \$2.00 per hour with time and one-half after 40 hours, with the understanding that the work week would consist of not more than 50 hours. The four employees agreed to this plan and the contracts were signed.

What problems do the above set of facts raise under the Fair Labor Standards Act, and what rulings would you anticipate?

IV. Assuming House Bill No. 2, as proposed in the 71st General Assembly of Illinois, was passed, answer the following questions:

X corporation manufactures storage bins for surplus agricultural products. It employs 100 clerical personnel and about 600 production workers. The latter are members of Local 200 of the United Bin Builders of America. In hiring clerical workers X administers an aptitude test acquired from the local vocational school, requires a physical examination, and awards points for personality as judged by the interviewer.

Miss A, who is a Negress, applied for one of the clerical jobs. She passed the aptitude test and the physical, but was judged low on personality. The position was awarded to Miss B, a white girl, who scored somewhat less on the aptitude test, passed the physical, and was given a high personality rating. Miss B had been the president of her high school class. There were Negroes in the production force at X, but as of the present time no Negroes on the clerical staff. What complaint, if any, does Miss A have, and what may the Illinois Equality of Employment Opportunity Commission do about it?

Miss C, a rather plain single woman about 30 years of age, had been the receptionist at the plant for five years. Unhappy with her unmarried state, Miss C was attracted to and joined a new religious organization which espoused polygamy, on the ground that woman's most sacred function was producing offspring, and since there were more women than men in the population, polygamous marriages were desirable as a matter of moral principle. This religious sect received considerable local publicity, and Miss C was identified with it. Fearing that ridicule and scorn which were being generated locally towards the organization might hurt its business, X removed Miss C as a receptionist and gave her a job which paid equally well in another portion of the business office where she did not have access to the public. Miss C did not like this move. What complaint, if any, does she have under the above law, and what may the Commission do about it?

All of the janitors at the X plant were recently arrived Puerto Ricans who spoke only Spanish. They were readily accepted into the union, but the union insisted that since the passage of the 1959 labor law amendments requiring greater internal union democracy, it was necessary for all workers who wished to be employed in classifications above that of janitor to pass a basic English test as administered by the local high school so that they could intelligently participate in and understand the affairs of the union. The company would have been prepared to accept Puerto Ricans in other jobs except for the attitude of the union. There is no claim that the English test is unfairly administered, though up to the present time no Puerto Rican has qualified for a job above the classification of janitor. Do the Puerto Ricans have a valid complaint, and if so, what may the Commission do about it?

V. Answer the following questions in the brief spaces allowed:

1. The basic difference in coverage between the National Labor Relations Act and the Fair Labor Standards Act is:

2. A principal reason why so much of the health and safety legislation is found in state rather than federal statutes is:

3. "Willful violation" of the Illinois Scaffolding Act has been construed to mean that the employer will be liable when:

4. Liability under the Scaffolding Act in Illinois is affected by the Workmen's Compensation Law in the following fashion:

5. Tort actions at common law were relatively unsuccessful where an employee tried to sue his employer for a work-incurred injury because:

6. It is thought that some workers who have incurred serious injuries for which they are being compensated through Workmen's Compensation benefits resist efforts at rehabilitation because:

7. If Miss X, who has received a disfiguring facial scar in a factory accident and has been compensated therefor under Workmen's Compensation, wants to bring an action in tort against her employer for damages arising out of social embarrassment and loss of friends, what will your advice to her be, and why?

8. Under what circumstances, if any, may an injured employee bring an action under the workmen's compensation statute of more than one state?

9. The essence of the argument in favor of disability insurance, which is now available in only a few states, is:
10. The general rule with respect to the right to inventions may be stated as follows:
11. The theory of the overtime-after-40-hours requirement of the Fair Labor Standards Act at the time the act was passed was:
12. One of the principal criticisms of the merit ~~or~~ experience rating principle in unemployment compensation is that:
13. Some employers would prefer to pay the entire tax for supporting the unemployment compensation system rather than have employees contribute because:
14. State unemployment compensation agencies found it necessary to work out reciprocity agreements because:
15. A significant corporate asset in the unemployment compensation field consists of:

16. Typical administrative problems faced by the Social Security Administration in deciding entitlement to benefits would be: (give at least three)

17. Some of the reasons why private employers have found it desirable to establish private pension plans are: (give at least four)

18. The argument that social security benefits are paid for twice is based upon:

19. The rationale behind permitting an executor to collect retirement benefits due but unpaid to the deceased is that:

20. Some tax problems which arise in connection with the establishment of a private pension scheme are: (give at least three)



FINAL EXAMINATION IN STATE AND LOCAL TAXATION (Law 349)

First Semester 1959-1960

Professor Young

TIME: 3 HOURS

Instructions: (1) Begin the first question on the second page of the examination book.

(2) Plan your answers carefully and state your reasons fully.

(3) Adhere to the indicated space limitations.

1. D, a resident of State X, was engaged in the business of selling fresh fruits and vegetables at wholesale in a principal city in State X. It was his practice to purchase and sell these items in carload lots. His source of supply was primarily the states of California, Florida, and Texas, where he made his purchases through local agents. State X imposed, among others, the following taxes: (a) a general property tax; (b) a flat 2% gross income tax upon gross income including gross income derived from trade or business conducted in the state; and (c) an inheritance tax. D died January 2, 1959. On December 30, 1958, he had sold to A, one of his best customers, ten cars of citrus fruit which were to be shipped from California. The memorandum of sale read: "D has hereby sold to A, ten (10) cars of California citrus fruit represented by the following bills of lading: . . . Payment of the purchase price shall be made upon receipt and inspection of the merchandise by the purchaser." The bills of lading covering these shipments were properly identified in the memorandum. D's California agent had purchased the ten cars of fruit on December 29. On the same day, the agent obtained negotiable bills of lading in D's name and wired the descriptive information to D. The ten cars were moved out of California by the railroad carrier on December 29, 1958, but the bills of lading were held by the agent until January 4, 1959. On that date they were posted via air mail to D. They were received at D's place of business on January 6. The shipment of the cars was delayed in Omaha on December 31 as a consequence of a severe blizzard. To provide additional shelter from the freezing weather, the freight cars were shunted into a large railroad shed in the Omaha terminal area. The cars were held there from December 31, 1958, until January 4, 1959, when shipment was resumed. The railroad carrier tendered delivery of the cars at D's warehouse in State X on January 6. D's office manager advised the carrier that the cars should be placed at A's warehouse, and the bills of lading, properly endorsed, were delivered to A. The shipment was accepted by A and payment of the purchase price was made to D's executor. The only family member who survived D was his daughter R, who is married and resides in Florida. She is the sole beneficiary of D's estate.

You are attorney for the executor of D's estate. He has received the following tax bills and requests your advice as to whether these should be paid. You are to assume that in each instance the taxes assessed are within the scope of the respective state statutory provisions. What do you advise? Discuss fully.

(1) (5%) California assessed a property tax upon the value of the bills of lading in the hands of D's agent in California on January 1, 1959, which was tax day under the California statute. (1/2 page)

(2) (5%) Nebraska assessed a property tax upon the value of the fruit held in storage in the cars placed in the car shed in Omaha on January 1, 1959, which was tax day for Nebraska. (1/2 page)

(3) (10%) State X assessed a personal property tax upon the value of the ten cars of fruit which had been purchased by D's agent on December 29. State X also assessed a personal property tax upon the amount due under the contract of sale entered into on December 30 with A. January 1 was tax day in State X, but it was

also provided that any property brought into the state after January 1 and prior to June 1 should be added to the tax rolls for the calendar year. (1 page)

(4) (10%) State X assessed an inheritance tax upon D's estate by including in the taxable estate the value of the 10 cars of fruit and the amount due at the date of death under the contract of sale entered into with A on December 30. (1 page)

(5) (5%) Nebraska assessed an inheritance tax upon the value of the ten cars of fruit in storage in Omaha on the date of D's death. (1/2 page)

(6) (5%) Florida assessed an inheritance tax upon the value of R's inheritance, including the value of the ten cars of fruit and the amount due under the contract with A. (1/2 page)

(7) (10%) State X assessed a gross income tax upon the amount realized upon the sale to A. (1 page)

2. You are legal adviser to a member of the Illinois General Assembly who is Chairman of the Revenue Committee of the House. He has requested your advice as to the validity of the following legislative proposals which are under consideration. Discuss each proposal, limiting your comments to the space indicated.

(1) (10%) A major problem in the administration of the local property tax is the assessment of industrial and manufacturing plants. These properties are presently assessed by local assessment officials who rarely have the necessary training or experience required for the proper performance of this task. It is proposed that the responsibility for assessing such property be vested in the State Department of Revenue. The assessment would be made by the Department and certified to the local authorities in the same manner as the assessment of railroad property. To finance this function, a special property tax would be imposed by the State upon industrial and manufacturing properties throughout the State. These funds would be earmarked for the payment of salaries and other expenses incurred by the Department of Revenue in making these assessments. (1 page)

(2) (10%) It is proposed that the provisions with respect to the taxation of personal property brought into the State after April 1 be changed to provide that such property shall be assessed only for the fractional portion of the year that the property is present in the State. To illustrate, if property were brought into the State on July 1, it would be assessed at 50% of the full assessed value for the particular year; if it were brought in on September 1, at 33%; and if it were brought in on October 1, at 25%. The sponsors of this proposal emphasize the fact that the property in these circumstances enjoys the protection and benefit of Illinois law only for a fractional portion of the tax year. (1 page)

(3) (10%) It is proposed that the provisions for the assessment and valuation of improvements upon real property under construction on January 1 each year (tax day for real property), be assessed at 10% of the cost of construction incurred up to the assessment date. Sponsors of this proposal point out that improvements under construction do not represent income producing property and that lessening of the tax load upon buildings under construction will tend to encourage economic activity. (1 page)

3. (20%) R, a resident of Champaign County, Illinois, died in July 1958, leaving the residue of his estate on trust with the provision that the yearly income be divided equally between the following universities: Illinois, Columbia, Michigan, and Pennsylvania. It was further provided that each university should apply the amounts received under the trust to scholarships for worthy students. The residuary estate consisted of Illinois farm land of the value of \$200,000 and various common stocks having a value of \$300,000. You are attorney for the trustee under the trust. He informs you that he has received property tax bills for the year 1959 based upon an assessment of the farm land and common stocks at full market value. All other property on the tax rolls has been assessed at approximately 50% of full value. The trustee requests your advice as to whether he should proceed to pay the taxes. What do you advise? Discuss fully. (2 pages)

ALLOWED TIME: 3 HOURS

- Instructions: (1) Begin the first question on the second page of the examination book.
(2) Plan your answers carefully and state your reasons fully.
(3) Adhere to the indicated maximum space limitations.

I. The Cannonball Express Co., an Iowa corporation, operates an interstate trucking business between Omaha, Nebraska, and Indianapolis, Indiana. The company has offices, shipping depots and warehouse facilities not only in Omaha and Indianapolis, but also in Des Moines and Davenport, Iowa; Rock Island, Peoria, Champaign, and Danville, Illinois; and LaFayette, Indiana. The principal office of the corporation, however, is in Davenport, Iowa, where the company maintains a garage to provide regular servicing and major repairs to its fleet of one hundred trucks. A small truck is permanently assigned to each depot in the several cities to handle the pick-up and delivery of small loads within the area served by each local office. The company handles shipments between cities within each state as well as shipments between cities in the different states. The assets of the corporation total \$1,000,000, consisting of a fleet of trucks valued at \$500,000 and office, depot and warehouse facilities also valued at \$500,000. The office, depot and warehouse facilities are allocated among the several states in approximately the following ratios: Nebraska, 10%; Iowa, 40%; Illinois, 30%; and Indiana, 20%. On a ton-mileage basis, the fleet of trucks is operated continuously through the several states on approximately the following basis: Nebraska, 5%; Iowa, 35%; Illinois, 35%; and Indiana, 25%. With this information as a background, consider the following problems.

A. (10%) The tax authorities of Iowa have assessed a personal property tax upon the entire fleet of one hundred trucks owned by the Cannonball Express Co. for the year 1959 as having a tax situs at the principal office in Davenport. The assessment was made on tax day, October 1, 1959. On that date, only twenty of the company trucks were in the State of Iowa. The 1959 Iowa tax bill has been received by the corporation. Under the Iowa statutes it is provided that, in a suit to collect taxes, the assessment shall be deemed prima facie correct. The corporation requests your advice as to whether the tax should be paid. Discuss.
(1 page)

B. (15%) On April 1, 1959, the local assessor in Champaign observed that ten of the Cannonball trucks were parked in the parking area of the company's Champaign depot and warehouse. These ten trucks contained certain machinery and equipment for delivery to the Urbana plant of Magnavox Company. The machinery was for a new assembly line being installed in the Magnavox Urbana plant. Arrangements had been made by Magnavox with the Indianapolis manufacturer to deliver the new machinery at the Urbana plant on April 2. This schedule had been established so that the machinery could be taken off the trucks and immediately placed in position in the Magnavox factory. The Cannonball trucks delivered the machinery to the Magnavox plant in accordance with this schedule on April 2.

During the period that the 1959 assessment of personal property was being made in Champaign, the assessor delivered a tax return to the local office of the Cannonball company. The company filled out the return and mailed it to the local assessor but did not include the ten trucks. On the basis of information supplied by the local assessor, the supervisor of assessments added the ten trucks to the Cannonball assessment but no notice was given to the company. The assessment was duly published, however, prior to the meeting of the Board of Review. Cannonball did not

file a complaint with the Board of Review with respect to the assessment, and the Board proceeded to confirm the assessment submitted by the supervisor of assessments. The corporation received its 1959 personal property tax bill on May 10, 1960, but it has not made payment. The addition of the ten trucks to the corporation's personal property assessment resulted in an additional valuation of \$50,000 and an additional tax in the amount of \$1,600. The collector has indicated his intention of bringing suit in County Court to collect the amount of the unpaid taxes. The corporation admits that the trucks have been fairly valued but objects on the ground that the trucks are not taxable in Illinois. The corporation requests your advice. Discuss. (1½ pages)

C. (15%) The machinery and equipment on the Cannonball trucks described in (B) above, which was delivered to Magnavox on April 2, was added by the assessor to the 1959 assessment of personal property of the Magnavox Co., an Illinois corporation, at a valuation of \$100,000. This figure represented 50% of the cost of the machinery to Magnavox, and the assessor followed the practice of consistently valuing personal property at 50% of its actual market value. The assessor notified Magnavox of his action and Magnavox appealed the assessment to the Board of Review on the ground that it did not own the property on April 1 since, under the terms of the contract of purchase, title to the machinery was to pass to Magnavox only upon delivery at the Magnavox plant. After a hearing, the Board of Review affirmed the assessment. Magnavox has received its 1959 property tax bill, and the additional tax due by reason of the assessment of this machinery is approximately \$3,200. The company has not paid the tax bill. The collector has indicated his intention to bring suit and Magnavox requests your advice. Discuss. (1½ pages)

II. (20%) One of the most serious objections to the Illinois property tax is that the burden of the tax falls primarily upon real property and tangible personal property, since intangibles are consistently omitted from the tax rolls. It has been suggested that this problem can be dealt with by imposing a special transfer tax at the death of the owner upon the value of intangibles which have been omitted by the decedent from his personal property tax returns during his lifetime. The special tax would be in addition to the regular inheritance tax and would be imposed at the rate of 1% for each year during which the decedent omitted the intangible property from his personal property tax return, but not to exceed a rate of 20%. For example, if the decedent had owned the property for a period of five years prior to his death and had never listed the property for taxation, the special tax would be imposed at the rate of 5% upon the date of death value. If the property had been owned and omitted for a period of seven years, the rate would be 7%; if owned and omitted for ten years, the rate would be 10%; and so forth, up to a maximum of 20%. The problem of disclosure at death would be resolved inasmuch as the intangible property would be included in the executor's inventory of property owned by the decedent which would be filed in the probate court and become a matter of public record.

Assume that this proposal is to be submitted at the next session of the General Assembly and that you are requested to render an opinion as to the validity of this legislation. What is your opinion? Discuss. (2 pages)

III. John Decedent, who held 60% of the stock of Cannonball Express Co. (see question I), died on June 1, 1960, a resident of St. Louis, Missouri. He bequeathed his stock in the Cannonball Express Co. to his son John, a resident of Seattle, Washington. Several states have assessed death taxes upon the transfer of this stock. Discuss in each case the validity of the tax. (See page 3)

- A. (5%) Missouri has assessed an inheritance tax upon the entire value of the Cannonball stock owned by Decedent. ($\frac{1}{2}$ page)
 - B. (5%) Iowa has also assessed an inheritance tax upon the entire value of the Cannonball stock owned by Decedent. ($\frac{1}{2}$ page)
 - C. (5%) Indiana has assessed an inheritance tax upon 10% of the value of the Cannonball stock. This assessment is based on the fact that the office, depot, and warehouse facilities of the corporation which are located in Indiana comprise approximately 10% of the total assets of the corporation. ($\frac{1}{2}$ page)
 - D. (5%) Washington has assessed an inheritance tax upon John based upon the value of the stock which he acquired from his father's estate. ($\frac{1}{2}$ page)
- IV. (10%) The Iowa statute under which the Cannonball Express Co. (question I) was organized provided that any corporation organized thereunder should pay an annual franchise tax as of January 1 of each calendar year, consisting of the sum of the following:

- (1) 1% upon its total gross receipts for the prior year; and
- (2) $1\frac{1}{2}$ of 1% of the total value ^{as of January 1} of all its assets wherever located.

The franchise tax is payable on February 1 of each year. The statute provides that failure to pay the tax shall constitute grounds for revocation of the corporate charter. The Cannonball Express Co. has requested your advice as to whether this statute is validly applicable to their operations. Discuss. (1 page)

- V. (10%) An Iowa statute authorizes cities and villages to license and regulate warehouses to assure safe construction and maintenance and to protect against fire hazards. Pursuant to this statute, the City of Des Moines has recently adopted an ordinance which provides for annual licensing of all warehouses located within the city limits and for periodic inspection of all such facilities. The annual license fee is established at the rate of 10¢ per square foot of warehouse space. The depot and warehouse of the Cannonball Express Co. in Des Moines (question I) has an area of 10,000 square feet and the annual license fee assessed under the Des Moines ordinance is \$1,000. The corporation seeks your advice as to whether it should pay this license fee. Discuss. (1 page)

FINAL EXAMINATION IN SURETYSHIP (Law 345)

First Semester 1958-1959

Professor Holt

TIME: THREE HOURS

Give reasons for your conclusions. Due attention should be given statutes of the types considered in class.

1. (a) C made a contract with PD whereby C was to ship to PD 1000 tons of coal a month, and PD was to pay an agreed price within two weeks after the receipt of each shipment. To induce C to enter into this contract with PD, S had signed a written guaranty that PD would make the payments stipulated. C shipped the first two shipments as agreed, but sent no coal for the third month. If C shipped coal the fourth month which PD refused to accept, rights of C against S? If PD accepted the coal for the fourth month and failed to pay for it, rights of C against S?

(b) Suppose the contract between PD and C required C to make shipments at the rate of 1000 tons a month for one year, and PD to pay for each month's shipment within two weeks after receipt of the same. C failed to ship the third month, but PD accepted shipments for each of the remaining nine months and promptly paid the stipulated price for each shipment but the last, which he failed to pay. Rights of C against S?

2. PD gave a mortgage to S and S-2 to secure them as sureties on certain outstanding notes of his and on notes of his which they might later execute as sureties. On one outstanding note for \$10,000 - Note #1 - T was cosurety with S and S-2. T paid this note, but before he did so, S, S-2, and R as sureties for PD executed another note for \$10,000 - Note #2. R paid this second note. PD was insolvent. On proceedings in equity to foreclose the mortgage, all parties in interest were before the court. The proceeds of the foreclosure amounted to \$10,000. What disposition?

3. Maker executed and delivered to Payee for the latter's accommodation his note in negotiable form for \$2000. Payee indorsed in blank and discounted with State Bank, which had full knowledge of the accommodation character of the note. Before maturity of the note, State Bank became insolvent. Payee as depositor then had a credit balance with that Bank to the amount of \$2100. He brought suit in equity against the receiver of the Bank to compel the latter to offset this balance against the amount due on the note. Result?

4. Paul, as payee, indorsed for the accommodation of Michael, as maker, a negotiable note due July 1, 1950. Michael delivered the note so indorsed to Charles and received from Charles the face amount of the note. Michael made no payments on the note. Paul died in March 1956 and after his death his administrator paid to Charles in February 1957 the balance due on the note. At that time action on the note against Michael was barred by the statute of limitations, but action against the administrator of Paul on Paul's indorsement was not barred. The administrator promptly sued Michael for money paid for the use of Michael. How can such an action be supported?

5. State X had \$150,000 of state funds on deposit with the Northland National Bank. To secure the State, the bank had pledged with the State \$15,000 par value bonds and had given a bond in the penal sum of \$125,000 on which S Company was surety. Upon the insolvency of the bank the claim of the State was satisfied in full by a forty per cent dividend declared by the bank's receiver, proceeds from the sale of the pledged bonds, and payment of the balance by S Company. Further dividends are to be declared by the receiver of the Northland National Bank. Rights of S Company?

6. By statute when a surety pays a judgment for a judgment debtor "the judgment shall not be discharged by such payment, but shall remain in force for the use of" the surety. In July 1952 S became a surety for a stay of execution on a judgment recovered by C against D, which was a lien on D's land. In October 1952 S satisfied the judgment, and the sheriff made return of execution as follows:

"I return the within writ of execution satisfied in full as shown by C's receipt for principal and interest."

The return with receipt and release executed by C were duly recorded in the execution docket. In 1955 D sold his land to B, a bona fide purchaser for fair value with no knowledge that S had paid C's judgment. In 1956 S caused execution to be issued on C's judgment against D and levied on the land. B sued S and the sheriff to enjoin the sale. What result?

7. S Surety Company was bound to County C upon the bond of A, county auditor. A drew fraudulent warrants for the payment of county funds, payable to the order of F, indorsed them "F by A," and collected payment from T, county treasurer, who acted negligently but in good faith. S paid C County, as required by the bond, the amount of A's defalcations.

(a) Rights of S?

(b) In addition to the facts stated, assume that by statute the bond protected not only County C, but also "any person injured by the wrongful act of A in his official capacity." Rights of S?

NAME _____

NO. _____

FINAL EXAMINATION IN TAXATION OF GRATUITOUS TRANSFERS (Law 352)
First Semester 1959-1960 Professor Young

ALLOWED TIME: 3 HOURS

INSTRUCTIONS

- (1) Questions I and V are to be answered in the space provided in these mimeographed materials. Questions II, III, and IV are to be answered in the examination book. All mimeographed materials are to be returned with your examination book. Write your name and number on the separate examination book.
- (2) Organize your answers carefully. State fully your reasons.
- (3) Adhere to the indicated space limitations. Each side of a page in the examination book is to be treated as one page.
- (4) You are not expected to make any computations involving the use of the annuity tables included in the income and estate tax regulations.
- (5) Students may have with them the Internal Revenue Code, the Income Tax Regulations, and the CCH students' tax service, Federal Taxation - Current Law and Practice.

I. (10%) In 1940, A purchased certain securities at a cost of \$60,000. In 1945, when the securities were valued at \$100,000, A transferred the property on trust with the provision that the income be paid to W, his wife, for life, thereafter to A for life if he should survive her, with a gift over to B in fee. A died December 1, 1959, at which time the securities had a fair market value of \$350,000. Both W and B survived.

(a) What, if anything, is includible in A's gross estate? Discuss.

(b) The trustee sold the securities on December 30, 1959, for \$375,000. What, if any, gain or loss should be reported on this transaction? Discuss.

II. (30%) On January 1, 1959, following surgery for a malignant condition, H transferred on trust securities having a value of \$500,000. Under the terms of the trust, the income was to be paid to H for life with remainder in fee simple to W, his wife. The accepted actuarial value of W's remainder interest at the date of creation of the trust was \$450,000. The trust was created by H pursuant to a written agreement with W that in consideration of the trust she would deed to their son John certain Illinois farm lands which she had inherited in 1940 from her father. Simultaneously with the creation of the trust by H, W deeded to John the farm lands consisting of 800 acres and having a value of \$450,000. The farm lands had been included in the gross estate of W's father at a total value of \$120,000. On December 15, 1959, H died as a consequence of the malignancy. At the date of H's death, the securities held on trust had a value of \$510,000. On December 16, 1959, John sold the farm lands for a cash consideration of \$420,000. Discuss the various tax consequences of these transactions. (3 pages)

III. (20%) On January 1, 1959, T, age 55, transferred on trust securities having a value of \$250,000. Under the terms of the trust, the income was to be paid to T's father, age 75, for life, with remainder over to T's two children in equal shares. Under the provisions of the trust indenture, T reserved the power to revoke the trust during his (T's) lifetime, but this power could be exercised only after the death of his father. T was killed in an airplane crash on January 1, 1960. His father, his wife, and his two children survived. The income of the trust for the year 1959 which was distributed to T's father totalled \$15,000. Discuss the various tax consequences of these transactions. (2 pages)

IV. (20%) On January 1, 1958, F conveyed to his daughter, S, the fee interest in an apartment building having a value of \$200,000 upon the oral understanding that S would apply the net income each year to the purchase of common stocks selected by F. It was agreed that these securities were to be registered jointly with rights of survivorship in the names of S and F. F died in an automobile accident on January 1, 1960. On that date the apartment building was valued at \$210,000. The net rentals from the building during the period January 1, 1958, to January 1, 1960, totalled \$25,000. This sum was invested in jointly registered common stocks which had a value of \$30,000 at F's death. Discuss the various tax consequences of these transactions. (2 pages)

V. (20%) Indicate by circling Y (yes), N (no), or U (uncertain) whether the following items qualify for the marital deduction in H's estate. H died December 1, 1959, and the family members who survived him were: his wife, W, age 60; his son, S, age 34; his daughter, R, age 30; and his mother, age 80. State briefly in the space allowed the reasons for your conclusions.

Y N U (1) In 1951, H purchased a fully paid-up life insurance policy in the face amount of \$100,000, and designated W as beneficiary. In January 1957, H assigned the policy absolutely to R. R did not change the designation of W as primary beneficiary but added a secondary beneficiary by providing that the proceeds should be paid to H's executor or administrator if W did not survive H. Upon the death of H, the proceeds were paid to W pursuant to the terms of the policy.

Y N U (2) In 1940, H and W acquired as joint tenants by devise from W's father an apartment building having a value of \$100,000. In 1945, H and W sold the apartment for \$250,000. The proceeds were invested in blue chip common stocks which were registered in W's name. In 1956, W sold the securities for \$400,000 and purchased Illinois farm land, taking title in joint tenancy with H, R, and S. At the date of H's death, the farm was valued at \$460,000.

Y N U (3) In 1950, H transferred securities on trust with the provision that the income be paid to R until H's death. At H's death the trustee was directed to liquidate the trust assets and purchase an annuity for W. H retained the power to revoke the trust at any time with the consent of W. This power was not exercised. At H's death, the trustee promptly liquidated the corpus and realized \$200,000, which was applied to the purchase of an annuity for W.

(4) How should each of the foregoing transactions in this question (V) be treated under the Illinois Inheritance Tax? Explain.

October 27, 1958

Professor Proehl

TIME: One Hour

Robert, a grown man of 23 with the mentality of a boy of six and a rheumatic heart, was attending a lodge picnic with his family. During the course of the afternoon, he was playing about an automobile (not his father's) and removed the two stones which the owner had placed in front of the rear wheels of the car, which was parked in a marked parking area on an incline above the picnic grounds. When he had tired of playing with the stones, he climbed into the driver's seat of the car and in "pretend-driving", moved the gear lever to neutral and released the hand brake. The car rolled down the incline toward the picnic area. Robert became frightened and pressed the horn, so that the persons in the picnic area dispersed in time, and no one below was hurt.

When Robert pressed the horn, the pregnant Mrs. N. Ceinte, whose husband owned the car, and who had been taking a nap in the rear seat of the car, started up and screamed. This frightened Robert, and he had a heart seizure and slumped over the wheel unconscious. The car, whose speed never exceeded fifteen miles per hour, hit a rock, was diverted from its course toward the river below, and came to a sudden but not violent stop in a large clump of wild rose bushes, with Mrs. Ceinte seated and bracing herself. Mrs. Ceinte fainted, but she was promptly revived. A doctor in the crowd examined Mrs. Ceinte and Robert and determined that neither required attention for bruises, fractures, etc. Robert was taken, still unconscious, to a hospital, where he subsequently recovered. Mrs. Ceinte vomited that evening and complained of a headache. She gave normal birth to a child subsequent to the filing of her suit against Robert but before the suit came to trial. At the trial she complained that as a result of the event she had been "nauseated", had felt "discomfort and some pain 'all over'", and that she had "worried about having an abnormal baby" during the remainder of her pregnancy as a result of the shock she suffered. At the trial Robert admitted that he had seen Mrs. Ceinte asleep in the rear seat when he got into the driver's seat.

1. Discuss the nature of Mrs. Ceinte's action. What theory or theories will Mrs. Ceinte's attorney advance as a basis or bases of liability? How will Robert's attorney defend? How do you hold?
2. Does Mr. Ceinte have an action as owner of the car? Discuss.

FINAL EXAMINATION IN TORTS A (Law 303)

First Semester 1958-1959

Professor Proehl

TIME: 3 HOURS

The problems have been stated as simply as possible, but this does not mean that the problems themselves are necessarily simple. Read each question at least twice. Then think about it. Plan your answer. Know where you will start, where you will go, and where you will stop before you begin writing. It is suggested that if you spend up to one-third or perhaps even as much as one-half of the allotted time thinking each problem through (and perhaps jotting down some ideas), the answer can be written in the balance of the allotted time.

Write complete sentences and write legibly. If you think it necessary to assume any facts beyond those given, be sure to state them.

I. (20 minutes) Plaintiff was a passenger in an automobile driven by defendant, who lacked two months of being 17 years of age, and was driving an automobile owned by his uncle. The car was so constructed that when the key was removed, a pin would be inserted by a spring in a hole in the steering column and would lock the wheel when the wheel was turned. On the way home from high school, where the two were classmates, defendant drove along a straight road at a speed of approximately 50 to 65 miles per hour. The defendant pulled out the ignition key and caused the car to coast along the straightaway with the key removed. The car then came upon a 35- to 40-degree curve in the road. The defendant turned the car into this curve which caused the steering wheel to lock. Thereafter the car traveled about 125 feet when it hit a tree, at which time it was traveling 35 to 40 miles per hour. Plaintiff sues for the injuries he suffered. The Illinois Automobile Guest Statute applies. At the trial defendant testifies that he had "tried the ignition key many times and had found the lock mechanism did not work" and that when he drove the car with the key out the probability of causing injury to his guest "was the least of my thoughts." Defendant admits, however, that he had never driven around a sharp curve with the key out of the ignition and that furthermore he had never "gone into detail about it." What result? Does the result depend in any way upon the age of the defendant?

II. (20 minutes) Explain fully what Justice Holmes meant when he said in Texas & Pac. R. R. v. Behrmer (23 S. Ct. 622, 1903): "What usually is done may be evidence of what ought to be done, but what ought to be done is fixed by a standard of reasonable prudence, whether it is usually done or not." Illustrate with a brief, hypothetical set of facts.

III. (40 minutes) P, six years of age, walked into the front of a parked auto and lost an eye as the result of hitting the sharp radiator ornament which projected beyond the face of the radiator grill of the automobile. Section 63 of the California Vehicle Code provides in part. ". . . no person shall sell any new motor vehicle, nor shall any person operate any motor vehicle . . . which is equipped with a radiator cap or radiator ornament upon the top thereof which extends or protrudes to the front of the face of the radiator grill of such motor vehicle." P sued the defendant (D) motor manufacturer. Argue separately the cases for P and D.

IV. (20 minutes) "An interesting question arises when several defendants are sued and the proof affords an inference of negligence on the part of one of them but does not afford a basis for saying that it was more probably one of them than the others. Orthodox reasoning would lead to the conclusion that plaintiff has not met his burden of proof as to any of the defendants and that it was therefore not incumbent on any of them to come forth with an explanation." The plaintiff in

Ybarra v. Spangard could therefore not recover under this view without showing affirmatively which one of the defendants injured him. "This harshness has been sought to be justified, however, by pointing out that the ~~alternative~~ seeks to pin fault, and so liability, upon a group en masse. In a society like ours which values so highly the worth of the individual, this is a serious matter. Anything like a finding of guilt or the imposition of punishment or personal civil liability must be done on an individualized basis or there will be a serious threat to individual rights."

Do you agree with the stated point of view? Give and explain your reasons for agreeing or disagreeing. What factors, if any, mitigate the effect of liability "en masse" as stated here?

V. (30 minutes) Defendant (D) owned a department store. On the first floor entrance to the stairway to the basement, D had placed a rubber mat whose edges overlapped the first step. Mary, carrying her infant, and accompanied by her father, stepped on the mat, lost her footing, and was thrown, with the baby in her arms, down the stairs to a landing where the stairway took a right-angle turn. Mary's father and others rushed to her assistance. As her father reached the landing, however, others, rushing up from below, jostled him so that he lost his balance and fell from the landing on down into the basement, striking Mrs. Hardluck (P) who was on her way up. P sues D department store for her resulting injuries. Argue this case for D in terms of Palsgraf v. Long Island R. R. Co.

VI. (30 minutes) Discuss what the following fact situations have in common and whether you think res ipsa loquitur is applicable in each case.

- (1) Seven-weeks-old infant was scalded by steam and boiling water from a vaporizer, borrowed by infant's father from a neighbor who had bought it two years before from defendant manufacturer's retail outlet.
- (2) Thirteen-month-old baby died as the result of chicken bone lodged in respiratory system after having eaten can of defendant's soup.
- (3) Infant was burned to death in incubator, owned and furnished to hospital by Illinois Department of Health, which caught fire while being transported in defendant's ambulance.
- (4) Plaintiff was injured when one of roller skates he rented from defendant came loose a few minutes after skates were fastened to plaintiff's feet by rink attendant.

VII. (20 minutes) Plaintiff is the administratrix of Frank, who was a passenger on a cabin cruiser fishing off New Jersey. Returning in mid-afternoon, the cruiser became disabled and anchored 400 yards off shore. A storm arose and a Coast Guard motor lifeboat put out to assist the disabled cruiser and took it in tow.

During the tow, Frank attempted to walk along the deck of the cruiser to the after cabin, holding a handrail as he proceeded. The cruiser heeled sharply, the handrail broke, and Frank fell into the sea. The lifeboat crew immediately cut the tow line and made very effort to rescue Frank; however, he drowned before they could be of assistance to him. Plaintiff claims, in a suit against the United States under the Federal Tort Claims Act, that negligence of Coast Guard personnel caused Frank's death: first, the lifeboat had a defective reverse gear which delayed it in reaching Frank after he fell into the sea; second, the life rings in the lifeboat

were so secure that they could not immediately be thrown overboard; third, the crew of the lifeboat was less than the standard and customary Coast Guard complement. No other evidence pointing to negligence on the part of Coast Guard personnel was submitted by P.

The District Court found for the United States on the ground that the plaintiff had not carried her burden of proving that the attempted rescue failed because of the negligence of the Coast Guard. On appeal by plaintiff to the Circuit Court of Appeals, what result?

FINAL EXAMINATION IN TORTS A (LAW 303)

Second Semester 1958-1959

TIME: 4 HOURS

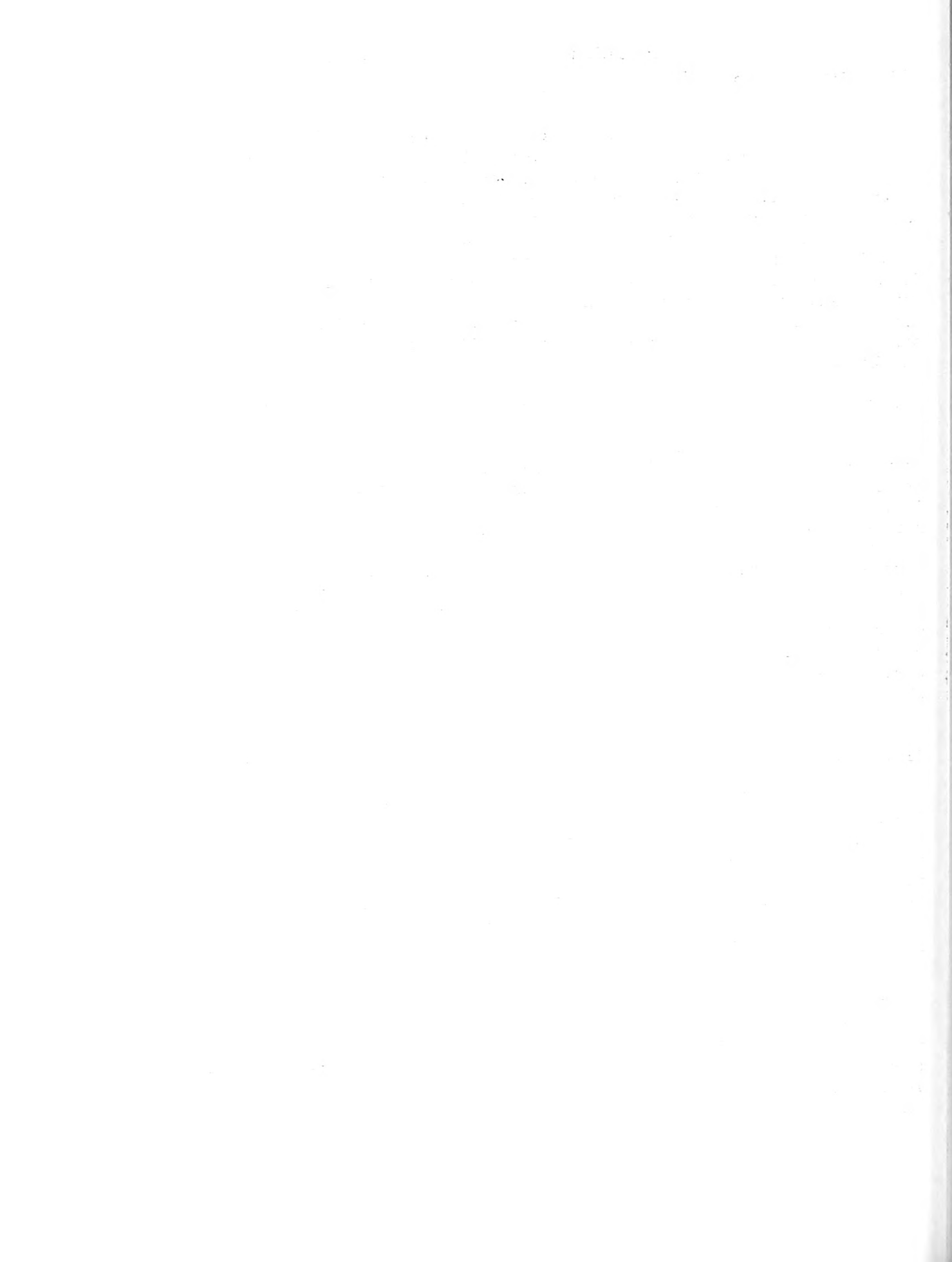
Professor Fleming

I. (20 points) X, who is a veterinarian, specializes in dogs. He maintains a kennel on what used to be the edge of the city, but is now a residential area. The dogs often howl at night to the discomfiture of the neighbors. Y, who is one of the recently arrived neighbors, complains to X and asks him to move the kennel. This X refuses to do. Y then spreads two stories around the city: (1) That X is leaving the city and going out of business, and (2) that X is a Mormon seeking to do business in this overwhelmingly Catholic community. In fact X is neither planning to leave the city nor to quit his business. X is a Mormon, and the city is overwhelmingly Catholic. In the ensuing period Y is continually bothered by the dogs in X's kennel, and X's business is hurt very substantially by the stories which Y has spread. Discuss the tort problems which are involved.

II. (25 points) X was without transportation but wished to reach the race track seven miles away. He conceived the idea of pretending an interest in buying a used car which, in the course of a road test, he might drive to the track. X visited Y's used-car lot, where Y gave him a big sales talk on an \$1800 car, including some statements which were definitely false and misleading. X then asked, and received, permission to test-drive the car for a few minutes. He promptly drove to the race track, where he parked the car and remained for two hours. During this time the car was struck by lightning and totally destroyed. X hitched a ride back to town and reported to Y that the car had been destroyed. Y then locked X in his office and told him he would keep him there until X made some arrangement to pay for the car. Four hours later X was released although he had not yet worked out any method of payment. Since then Y has been calling X at home every evening and threatening him with what he will do if X does not pay. X's wife often answers the telephone and she has become so nervous about the whole thing that she has been dismissed from her secretarial job. Discuss the problems which are involved in this set of facts.

III. (15 points) X began his college career at Podunk where, at the end of his freshman year, he was placed on probation for alleged involvement in a panty raid. X denied that he had had anything to do with the raid and was so incensed at being placed on probation that he transferred to Siwash. When Y, who was the Registrar at Podunk, received the request for transfer of credits, he complied, adding, however, an unsolicited note saying that X was on probation for participating in a riot which resulted in thefts. Y also said that there was an anonymous note in the Dean's office accusing X of stealing from his fellow dormitory residents, although this had nothing to do with his having been placed on probation.

Z, who was employed as a secretary in the Office of Admissions at Siwash, saw Y's letter. She then informed her boy friend, B, who lived in X's dormitory at Siwash, that X was a man of "bad moral character" and that the boys had better watch him. B passed this word around the dormitory with the result that X was shunned by everyone. Finally X found out what was behind the attitude of his fellow residents, and he now seeks to take legal action. Discuss the problems which are involved.



IV. (25 points) X was pledged to Y fraternity when he entered college. At the end of the first semester, a hazing period preceded the initiation.

During this time X, like all the other pledges, was subjected to a good deal of paddling. Brother Z, who was the paddle-master, never liked X very well and on one occasion during the hazing he hit X so hard that X sustained a slight fracture of the tail bone.

As a grand finale to the hazing X and the other pledges were taken 10 miles out in the country, left in an open field late at night, and told to find their way back to town. Seeing a farmhouse in the distance, the boys started towards it. As they approached the buildings a dog began to bark, and Farmer C, who had been having trouble with chicken thieves, came running out of his house brandishing a shotgun. Without waiting to say anything to the boys, C fired his shotgun, which was loaded with rock salt, over their heads. When they turned and ran, he fired at them, hitting a number of them, including X, but doing no serious damage. When the boys finally got away from the farm, they found an Illinois state highway leading to the city and they began to follow it. Unfortunately, that portion of the highway was closed to traffic because of road repairs, but the appropriately lighted sign blocking the road to vehicular traffic had been set up one mile ahead by the State Highway Personnel. As the boys walked in the dark, X fell into an unguarded hole in the pavement and broke his ankle.

X's father was outraged by this series of events and refused to let X be initiated. Instead he decided to find out what legal action would be available. Discuss the problems which are involved in this set of facts.

V. (15 points) Y owned and operated the Crash Book Service, a loose-leaf reporting service which provided insurance companies, damage appraisers, and automobile repair shops with data on current costs of auto repairs. In 1954 X became a full-time distributor for Y in the New England area. X agreed to plow back his commissions on the theory that he would profit more from renewal commissions as the business grew.

Z published a competing service which was not doing well. Believing that it would be more economical to buy out Y than to revamp its own service, Z undertook negotiations toward that end. Y realized that Z's resources were much greater than his own and that the alternative to selling out might soon be tough competition with Z after it revamped its own service. Y therefore agreed to sell to Z with an agreement that Y would remain as editor and would receive a royalty on all future sales of books. Z knew that Y had a contract with X which contained the following clause:

"Crash Book Service will deliver . . . to the distributor manuals necessary to . . . operate . . . subject to limitations necessitated by unforeseeable contingencies."

Prior to the sale Z advised Y to terminate the contract with X, following which Z would notify all of X's customers to deal only with Z's salesmen. X would no longer have any connection with the business or receive any credit for profits due on renewals.

Instead of terminating the contract, Y called X and asked him to return his contract in order that a more favorable one could be drawn. This X did, but Y then destroyed the contract, and X shortly received word that his services were no longer required.

Discuss the tort problems which are involved.

MIDSEMESTER EXAMINATION IN TORTS A (Law 303)

April 4, 1959

Professor Fleming

I. X owns some woodland and pasture near a State Forest Preserve. During the deer hunting season he often allows friends to hunt on his land. Y is among those having special permission to do so.

When the 1958 deer hunting season opened Y's nephew, Z, came to visit him. Both men wanted to go hunting and Y attempted to call X to ask if he might bring Z along. X's telephone was out of order, and Y took Z anyway without permission. While hunting on X's property Z, who was an inexperienced hunter, saw what he thought to be a deer and fired, killing the animal. It turned out that what Z thought to be a deer was, in fact, a prize steer which X's daughter, C, was grooming for an important 4-H contest. When X heard the shot he came out of his house and, on seeing what had happened, was enraged. He came running up to Y and Z, who were about to apologize, grabbed Z's shotgun away from him, and started after both Y and Z with the gun raised over his head as if to hit them. Y and Z ran, doubtless concluding that it would be better to send their apologies through the mail. As Y ran he stepped into an unseen and unguarded posthole which X was drilling and broke his leg. Z safely outdistanced X and got out of sight. X then smashed Z's shotgun over a stump. As he did so the gun went off, shooting off one of X's toes.

C, who had witnessed the shocking and untimely death of her pet steer from the window, became despondent, lost all interest in her school and 4-H work, and was a source of considerable expense to her parents for psychiatric treatment.

What legal problems are involved in this statement of fact, and how would they be resolved under common-law principles?

II. X is a private university. Y owns a student rooming house near the university. During a serious coal strike in January, X is unable to get high grade coal. As a result it has to burn such poor coal in its central heating plant that an enormous amount of soot is caused to descend on the neighborhood. Y's rooming house is near the heating plant. The soot renders occupancy of the rooming house undesirable and makes the property dirty and dingy. It is anticipated that the coal strike will last another two weeks. Y comes to you for advice as to what kind of action, if any, he may bring against X. What is your advice and why?

November 13, 1959

Professor Proehl

Mr. Brassie and Mr. Putter, who lived across the street from each other, never got along well. Mr. Putter, who lived on the north side of the street, where parking was permitted, was blessed with a large and noisy family. Mr. Brassie, who lived on the south side of the street, where parking was not permitted, had advanced into middle age without issue, a fact which he looked upon as a blessing when he viewed the Putter family, but for which he at other times upbraided his wife, whom he considered responsible for their childless state. The Brassies and the Putters did not speak to each other, except through the medium of the Putter children, and this traffic was principally one-way, consisting of severe, and sometimes profane, injunctions to the Putter children to stay out of the apple trees, to get out of the flower beds, or just to get out. These tensions smoldered under the surface for some time, but, as one neighborhood observer put it, the Putters and the Brassies were inevitably headed for court.

One summer day while Mr. Brassie's new car was parked on the Putters' side of the street, Mr. Putter proceeded to mow his lawn with a rotary mower. Thoughtlessly but fully intending to do so (and resenting somewhat that the Brassie car was always parked there), he mowed clock-wise and the cut grass was expelled so that it struck the side of Mr. Brassie's car. Since the grass was wet, some stuck to the side of the car and was noticed by the Brassies when they entered the automobile that evening. Mr. Brassie swore vehemently, and marched up to the door of the Putter residence to deliver a protest. Mr. Putter had by this time left to attend a meeting of the local bird-watching society and was not at home. Mrs. Putter answered the door. Upon learning that Mr. Putter was not at home, Mr. Brassie subjected Mrs. Putter to a vehement tirade, loud, profane, and somewhat indecent. His emotion was heightened by noticing for the first time that Mrs. Putter was obviously pregnant again, and instead of forbearing, he grew more angry and more violent. Mrs. Putter was standing behind the screen door, feebly trying to interject words of apology each time that Mr. Brassie drew a new breath. When he had finally exhausted his vocabulary, Mr. Brassie turned on his heel, stomped down the steps, and out to the car. At that time Mrs. Brassie, who was happy to see him exhaust his wrath on others, drew her husband's attention to the fact that two of the Putter children were trespassing in a Brassie apple tree. Thereupon, Mr. Brassie lunged across the street toward the tree, grasped it firmly in both hands, and shook it. Young Peter Putter, who was firmly lodged on a branch well out of reach, thought this great sport and taunted Mr. Brassie for what Peter obviously thought rather feeble efforts to dislodge him, but Patrick Putter was dislodged, fell, and ran off, clutching his left wrist. Mr. Brassie then tried to climb the tree, obviously doomed to failure, which only caused Peter to laugh more uproariously. Thereupon Mr. Brassie went into the house and brought out the Brassie cocker spaniel, which he tied to the tree, saying (according to Peter), "Now, you little worthless mutt, earn your keep for a change. Bite that little so-and-so when he comes down out of that tree." He and Mrs. Brassie then drove off to dinner and to go bowling. Mr. Brassie's game was off considerably.

When Peter and Patrick did not show up for supper, the remaining members of the Putter family were dispatched on scouting expeditions. Peter was finally located, still sitting in the Brassie tree, with the cocker at its foot. When asked why he had not come home, Peter said that he was a prisoner, and that Mr.

Brassie had told the dog to bite him when he came down. Peter was finally persuaded to come down, and all the dog did was to look quizzically as the children went home. Patrick was located under the Putter porch, nursing his wrist.

When Mr. Putter returned from his meeting, he found Mrs. Putter, whose strength had been maintained by sheer force of will until the children were in bed, prostrate on the living room sofa. She recounted the events of the evening and said that Mr. Brassie's visit had especially frightened and upset her, and that after the children had been put to bed, she felt faint and had to lie down. Mr. Putter helped his wife to bed and they retired. The next day an X-ray showed Patrick's wrist to be fractured. A few days later the chemicals in a lawn weed killer which Mr. Putter had used left a random but permanent pattern of grass blades in the paint of Brassie's car.

Discuss the rights of Mr. Brassie, of Peter, of Patrick, and of Mrs. Putter.

No. _____

First Semester 1959-1960

TIME: 3 hours

P consults you and you decide to bring an action based on four separate counts. What are they, and on what facts and law are they based? The jurisdiction has a "Shoplifters Statute" similar to that of Illinois.

II. P brought an action for damages for interference with use and enjoyment of his land by reason of D mining company's operation of a coal washer and drier. P complained of (1) gas, smoke, and fumes from burning "gob" piles (impurities removed from coal) and (2) dust from the stack of the drier. At the trial D showed (1) the washer was required to remove impurities from coal, (2) D tried to pile and feather-edge the gob to prevent spontaneous combustion, and put out such fires as occurred, (3) the mine had been in operation before P built his house and was the principal industrial employer in the county. P showed (1) gas, fumes, and smoke from the burning gob piles had blown over P's premises for over 5 years, (2) dust "was not too bad" except for the past 2 years, since the drier had been put into operation, (3) the mine was the only one in the county, which was otherwise agricultural. P failed to allege or prove any lack of care on D's part; and whether P had ever complained to D of the dust, gas, smoke, and fumes was disputed: P said he had; D said he had not.

Discuss. What result?

III. In Reynolds v. Wilson (Cal., 1958) the California Supreme Court, basing its decision on the modern view of the infant trespasser doctrine, held for the parents where a child of 2 years, 3 months, drowned when it fell into a partially-filled private swimming pool in which dirt and decomposed matter had accumulated. The father found the child dead, lying face down in the dirty, shallow water, and when he went into the pool to rescue the child, the bottom was so slippery that he was unable to carry the child to the steps. Now, in King v. Lennen (Cal., 1959), an intermediate court holds no cause of action is stated where a 1 1/2-year-old boy drowned in a private swimming pool filled to the normal level with "dirty, stagnant, and opaque water." The court distinguishes the Reynolds case.

Discuss the law involved. Is the intermediate court right or wrong in attempting to distinguish the cases?

IV. Consider the following letter from the Director of Nurses at the Rockton Hospital to the local Nurses Professional Registry:

"I have your letter of January 2, concerning the application of Miss Eva Smith to be registered with you.

"Miss Smith would not be permitted to serve on cases at this hospital if referred to us by you. When she lived in Rockton some years ago, she did specials [served as a non-staff nurse of special cases] here over a period of 3 months, during which we had 3 vials of demerol [a narcotic requiring prescription] disappear from our locked medicine cabinet on the floor where she was specializing. In two instances the loss occurred on the 3-11 shift while she was on duty, and the other loss occurred on the 7-3 shift when she had changed shifts for a few days. We also had two subsequent incidents, when she charted another medication on her patients' chart but was observed having taken demerol.

"I talked to Miss Smith about this loss of demerol at the time and recall that she had a most unusual and abnormal reaction to my questioning her.

"This in no way reflects upon the care which Miss Smith has given patients in our hospital.

"Sincerely yours,

"(Mrs.) Ellen Queen
"Director of Nurses"

As a result of receiving this letter, the Registry refused to list Miss Smith and she was unable to obtain employment as a nurse. Miss Smith thereupon brings an action against Mrs. Queen, who comes to you.

Discuss how you would approach this problem. What other information (facts) would you want from Mrs. Queen? What is the applicable law? In short, how would you go about defending this case?

V. (a) In selling a lot, which both vendor and vendee believed to be 150 feet deep, vendor failed to disclose that the abutting owner disputed the location of the lot line. A survey showed the lot to be only 147 feet deep. Does the vendee have a remedy? Discuss.

(b) Vendor's agent misrepresented the condition of the store building, stating that the roof did not leak, whereas in heavy rains it did. In fact, vendor knew the roof leaked, but had withheld the information from his agent. The agent, in replying to vendee's direct question concerning the roof, made his statement without any knowledge of whether it was true or not. Vendee's stock was ruined as a result, for which he seeks compensation, and he wants also to rescind the sale. What can he do?

(c) Vendor intentionally misrepresents the condition of the house sold to vendee, who continues to make monthly payments on the purchase price, knowing of the misrepresentation, until he brings his action some months later. Has he waived the fraud?

(d) Stockbroker A tells customer B that X Company shares are a good buy, believing this to be true. B demurs. A says he read in the paper this morning that Rockefeller is buying in. As a matter of fact, A read a news story about Y Company, which has a name similar to that of X Company. B buys and loses his money. Is A liable to B?

(e) A life insurance investigator asks you about X. You falsely state he is a light drinker, knowing that he is an alcoholic. X dies in a drunken stupor four months after policy is issued. (1) Are you liable to the company for its loss? (2) If you had told the truth about X, if the investigator had written your verbatim statement in his notebook, and X had found out, would you have been liable to X? Would X have alleged slander or libel?

(1)

(2)

TIME: 3 1/2 HOURS

Each of the questions carries a total of 20 points.

I. X owned 200 acres of woodland where the hunting was good. His friend Y sought and obtained permission from X to hunt thereon. Since Y had never been to the hunting site, X gave him instructions as to how to get there. Unbeknownst to X some boys had changed certain signs, with the result that Y actually ended up on the neighboring woodland of W. Just before leaving for the hunting trip, Y decided to take a friend, Z, along with him, although it was too late to call X and ask if this would be all right. When Y and Z reached W's land (which they thought belonged to X), they found an old jeep which was in running order and which they decided to use to penetrate further into the woods. Accordingly, they took the jeep and started off. Along the way they actually did cross over onto X's land. X had forgotten to tell Y that a drainage ditch was being dug thereon and, without seeing it, Y drove the jeep into the ditch. The impact broke the front axle of the jeep, sprained Y's arm, and cut Z's head.

Meanwhile W had come out to his land, only to find that his jeep was missing. Suspecting robbers he grabbed his shotgun and began to follow the path through the woods. When he came upon Y and Z he was furious, and without giving them a chance to explain, he pointed the gun at them and said that if they did not follow his orders, he would shoot. He then forced them to walk back to his cabin, where he locked them in while he went to find the sheriff.

Identify the tort problems which are involved in this set of facts, and give your analysis of the law with respect to each.

II. X was an artist of somewhat irregular working habits. He maintained a studio and living quarters on the sixth floor of an apartment building which fronted along the river. X conceived the idea of fishing out of his windows, and thereafter he spent many hours during the day and night dangling a long line from his window into the river. The neighbors were annoyed by this practice because they felt it encouraged children to lean out of the windows, because his lines became entangled in their windows, and because they found it unpleasant to have a fish suddenly slap against their windows as it was being hauled in by X. Several of the neighbors asked X to cease fishing but he ignored them.

Y was a young stenographer who also had an apartment in the building. One summer evening as she was sitting beside her open window reading, the fishing line, on which X had hooked a water snake, suddenly dangled through her window and dropped the snake in her lap. Y was badly frightened and became so nervous that she was not able to go to work for several days thereafter.

At the time of the incident with Y, W was consulting the landlord about renting office space on the first floor for an insurance office. He was just ready to sign the lease when the snake incident took place. After hearing about the fishing problem, W decided that he would look elsewhere for office space and he left without signing the lease.

What tort problems are involved in this set of facts, what is your analysis of the law, and what result do you predict?

III. X was interested in buying some land along a county road at the edge of a city in southern Illinois. The real estate agent, Y, informed X that the property would greatly increase in value because Z Company was about to locate a new plant there. Y knew at the time that no such commitment had been made by Z, although it was considering the matter. X decided to go for lunch at the local cafe while he pondered whether to buy the property. While there he happened to sit next to a table where a State Highway Department engineer was going over some maps with another party. In the course of their conversation X heard the engineer say that a new state highway was going to be put in immediately in place of the county road which bordered the property which X was considering. In fact, the engineer was confused as to the roads, and he meant to refer to another county road some ten miles away.

After lunch X, in reliance upon the assurance of the real estate agent that Z was shortly moving to town, and upon the information which he had picked up from the highway engineer, bought the property. Thereafter Z decided not to locate its plant in that vicinity and the error in the highway engineer's statement was discovered. X was upset by these developments, and was most unhappy about the fact that he had paid twice as much as the property was worth. While X was pondering legal action, oil was discovered on his land and it suddenly became worth ten times as much as he had paid for it. Nevertheless X felt that he had been deceived by both the real estate man and the highway engineer.

What tort problems are involved in the above set of facts, and what is your analysis of the applicable law?

IV. Y was a distinguished biochemist on the faculty of a state university. During the spring of 1960 one of his female assistants was found murdered. There was sufficient circumstantial evidence against Y to bring about his arrest, but the Grand Jury refused to indict him and he was released. Thereafter he resigned from the university because of the embarrassment which the publicity had brought to it, and his resignation was accepted.

X publisher was just bringing out a new popular publication called, "Distinguished Men of Science," in which there was a chapter dealing with the life of Y. Included in the chapter were two paragraphs which read as follows:

"After a distinguished career in the field of biochemistry, Y has recently been under suspicion in a strange murder case. His young and attractive assistant was murdered during the past year under circumstances which pointed the finger of guilt at Dr. Y. Though the evidence before the Grand Jury has not been made public, it is said that it clearly showed that Dr. Y was having an affair with the young lady, and that they had on numerous occasions registered at a motel under assumed names. It is thought that pressure from Dr. Y's family to end the affair was being brought at the time of the girl's death. Happily for Dr. Y, the Grand Jury refused to indict him and he is now free, though the embarrassment occasioned by the publicity caused him to resign his position.

"It is a distressing thought that even such distinguished men as Dr. Y are not free from the emotions which trouble lesser human beings, and that tragedy strikes at both the lowly and the great."

What rights, if any, does Y have against the publisher, what is your analysis of the legal problems which are involved, and what result do you predict?

V. X was a United States soldier in Korea. He was captured by the Chinese and "brainwashed" so that at the end of the conflict he decided to remain in China. Subsequently he changed his mind and decided to come home. At the time of his return he was thoroughly interrogated by American intelligence agents, who concluded that he had defected because of immaturity and that he now genuinely renounced any Communist inclinations which he might once have had. Nevertheless, as with all such defectors, his name was in the files of the FBI and a periodic check-up was made on his activities and whereabouts.

Some time after his return to America, X decided to go into business for himself. He leased a filling station from the Y oil company. Z, who also ran a filling station in the same town, learned of X's past record. Z then spread word around town that X had gone over to the Communists while a soldier in Korea, that he was now under surveillance by the FBI, and that he had been a traitor to his country. Z spread this information with the object of ruining X's business, and improving his own. When the truck drivers who delivered gas to X heard these stories, they refused to deliver to him, with the result that Y was unable to fulfill its contract. X was ultimately forced out of business and went bankrupt.

What tort problems does this set of facts raise, what is your analysis of the law which is involved, and what result do you predict?

FINAL EXAMINATION IN TORTS B (Law 304)

Second Semester 1958-1959

Professor Proehl

TIME: 3 Hours

There are seven (7) questions, all of equal value. You may omit one (1) of the seven, either by omitting to answer one or by "scratching" one answer of seven. A "scratched" answer will be totally ignored and the grade based on the remaining six. No extra credit will be given for seven answers.

Read the questions over carefully at least twice. Think before you write, and write systematically and (for my sake) legibly.

"Policy" explains a lot of law, but not all of it. Avoid subjective analysis and conclusions.

I. Explain why, at least in some jurisdictions, the term "infant trespasser doctrine" is more accurate than "attractive nuisance doctrine." Justify or criticize the shift which the change in terminology signifies. Illustrate.

II. On appeal from a judgment for P, a woman who had been frightened and had suffered a subsequent nervous breakdown after seeing her husband run over by a negligently driven car, defendant's attorney argued, inter alia, that (1) mental injury cannot be measured in money; (2) the physical consequences of mental injury are too remote, and proximate cause cannot be established; (3) recognizing the right to recovery in such cases would lead to a vast increase in litigation; (4) there is no precedent for recovery in such a case; and (5) recognition of this as a cause of action will lead to fictitious claims. How would you, as attorney for P-appellee, reply?

III. The U.S. Supreme Court recently had occasion to decide for the first time the status of a non-paying guest on board a commercial ship who was injured when he stumbled on defective flooring, and whether common-law principles governing such a situation on land ought to be adopted in admiralty. In a unanimous opinion written by Justice Stewart, the Court concluded, "We hold that the owner of a ship in navigable waters owes to all who are on board for purposes not inimical to his legitimate interests, the duty of exercising reasonable care under the circumstances."

Write the decision which precedes the above closing sentence in the opinion, in which you consider the adoption of common-law principles concerning the status of persons on the land or property of another (and the correlative duties of the owner) to admiralty, leading to the above conclusion. If you disagree with the Court, write a dissent and a closing sentence to replace the above.

Note: The fact that this case is in admiralty does not take it out of your reach. Treat the basic question only. In other words, do not put yourself at sea; but consider the problem strictly as a landlubber.

IV. You are attorney for a woman who is being sued because her dog bit a Fuller Brush salesman who opened the gate and came up the walk. At the trial the salesman testified that as he walked along the sidewalk toward the gate, the dog in the enclosed yard followed him inside of the fence for about 50 feet, barking continuously. Plaintiff predicates his complaint upon a state "Dog Bite Statute" which makes a dog-owner liable "to any person lawfully on the premises who is bitten ... regardless of the former viciousness of the dog or the owner's knowledge of such viciousness." The statute specified no defenses. Plaintiff admitted that he had not been asked to call on defendant, and that he had been canvassing the neighborhood.

1. Discuss all defenses you would argue in behalf of your client, specifying which you believe would be the most effective and arguing it in detail.

2. How would you argue the case above for the defendant if there were no "Dog Bite Statute," if the dog were shown to have barked and snapped at turning automobile wheels, and on one occasion, five years earlier, while the dog was nursing a litter, to have bitten a newspaper carrier, but never subsequently to have bitten any of hundreds of visitors or tradesmen?

V. Plaintiff purchased a wedge of cheese at one of defendant's stores. A few days later while preparing dinner, P was slicing pieces from the cheese and eating them. P noticed that one piece did not taste right and then observed a portion of a fly imbedded in the cheese. She had cut down through the fly and had eaten a part of it. About ten minutes later P did not feel well, and shortly thereafter became nauseated and vomited, and was ill for several weeks. P saw a doctor the day after eating the cheese, and he treated her over a period of five weeks. At the trial the doctor testified that he "would probably" have called P's illness toxic gastritis, but he did not testify that the ingestion of the fly caused or could have caused P's illness. The jury returned a verdict in P's favor, but the trial court directed entry of judgment for D. You are representing D on appeal by P. Argue the case for D.

VI. Defendant mistakenly delivered five unmarked cases of inflammable cellulose film to plaintiff's factory. One case was opened to determine the contents, but before it could be repacked, a typist deliberately touched the material with a lighted cigarette, causing an explosion which damaged the factory, for which damage plaintiff now sues.

1. What is the basis of the plaintiff's case? Of the defense? What is the result?

2. The typist's minor child, 8 years of age, who was visiting her mother at the plant at the time and was being shown about the plant by her mother (contrary to P company's standing instructions) when the mishap occurred, was burned and is also suing D for (a) her own injuries, and (b) her mother's death. What result in each cause of action?

VII. Defendant built and sold to plaintiff's parents a house. The parents had visited a "model house" constructed by D, one feature of which was an extra guard rail, at a height so a child could reach it, along the steps leading to the cellar. This was pointed out by D's salesman at the time as a desirable safety feature ("one of many we have incorporated in these houses"), and P's mother agreed that this was an excellent idea. The parents moved into the house they bought, which lacked such a guard rail, and a week later P, three years old, fell off the cellar steps and suffered severe head injuries when he landed on the concrete floor. P now sues for damages.

At the trial it is brought out that (1) plans and specifications of the house, on file with the Veterans Administration (through whose loan facilities the parents bought the house) did not include the extra rail; (2) when the father took delivery of the house, he executed an acknowledgment stating that he found the premises satisfactory except for an unconnected bell wire, a broken window pane, and some scratches on the walls; (3) the opening between the stairs and the "regular" hand-rail was 36 inches; (4) after the mishap the father examined 32 other houses in the subdivision and each had an extra, "child's" rail; (5) the construction superintendent did not know of any house in the subdivision which did not have such a rail; (6) D's engineer testified that it was up to the carpenter who installed stairs to put in an extra rail or not, as he chose.

Can P recover? If so, on what basis? If not, why not?

TIME: 4 HOURS

I. (60 minutes) A statute of the State of Green prohibits deer-hunting except during an open season from September 15 to October 15. A and B go deer-hunting on November 1. C, superintendent of a tract of timber owned by a lumber company, has made no inspection of the tract since September 15, believing it wiser to stay out of the woods during the hunting season. On November 1, C is making a circuit of the timber tract on his horse for purposes of inspection. A and B come across a deer and wound him slightly, but the deer runs off. They follow his trail. After several miles of tracing the deer, they hear a noise in the brush and see a movement of branches and twigs. A and B both fire at the movement. They rush to the spot and find C, who has dismounted and tied up his horse some distance away, wounded by a bullet in the calf of his left leg. A and B remove C to A's car to take C to a doctor. B offers to drive, since A is holding the tourniquet in an attempt to control the bleeding of C's leg. On the way to town, B drives at speeds of 60 to 70 m.p.h. over rough roads, loses control, and the car crashes. In the crash, C's right leg is broken and he sustains a concussion. A and B are seriously injured. All are removed to a hospital, where C is attended by the doctor of his choice, a man of excellent reputation.

Both A and B recover, but the doctor, in putting a cast on C's right leg, makes it too tight and fails to relieve the pressure over a period of days so that gangrene sets in. C's vitality is lowered and he contracts pneumonia and dies. An autopsy reveals that the bullet wound was healing satisfactorily at the time of death. C's medical bills total \$1350 and his funeral costs \$800.

C's horse, which was forgotten by C after he had been wounded and of which A and B never had knowledge, is left tethered in the forest and is attacked by wolves and destroyed, to the lumber company's damage of \$200. C's contract with the lumber company has over a year to run and it costs the lumber company \$500 in employment agency fees to replace him.

What are the rights and liabilities of the parties, including those of C's wife as personal representative or administratrix?

II. (40 minutes) A. In Bushnell v. Telluride Power Co. (145 F. 2d 950, 1944) D started a brush fire without securing a permit as required by statute. He started the fire with due care and kept it under control until an unexpected wind of hurricane proportions came along, causing the fire to escape D's control and to spread to P's property. The trial court granted P's motion for a directed verdict.

- (1) On what basis, if any, can the judgment of the lower court be affirmed?
- (2) On what basis can it be reversed?

B. In Mitchell v. Hotel Berry Co. (171 N.E. 39, 1929) P, a guest, sued D, hotel owner, for injuries suffered by P in a fire, the injuries alleged to result from the lack of sufficient exits. D showed that he had complied with the statutory requirements as to the number of exits required of hotels. At the close of P's evidence, D moved for a directed verdict, which the court granted, entering judgment for D.

- (3) Should the trial court's judgment be reversed on appeal? Why?

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C. In Krebs v. Rubsam (104 A. 83, 1918) D was the owner of an apartment house. He was under a statutory duty "to keep a proper light burning in the public hallways near the stairs, upon every floor, between sunset and ten o'clock each evening." P alleged that because of D's negligent failure to perform this duty, he fell while descending the stairs between sunset and 10 p.m. D showed by testimony of tenants that the light was on shortly before the injury and that it had been extinguished by some unauthorized person without the knowledge of D's janitor. D moved for a directed verdict.

(4) Should D's motion be granted? Why?

(5) What is the basic problem in all of these cases? Discuss. Suggest what you consider the better rule and give your reasons.

III. (40 minutes) A. P, guest in a car, was bending forward to deposit ashes in an ashtray when the owner-driver applied his brakes and swung the car to avoid a collision. P was thrown against the ashtray and lost the sight of his right eye, allegedly because the ashtray had a jagged, unfinished edge. P sued the manufacturer of the car, alleging negligence. D's motion for judgment notwithstanding the verdict denied. Zahn v. Ford Motor Co. (164 F. Supp. 936, Minn., 1958)

B. P, a six-year-old child, walked into a protruding, bullet-shaped radiator ornament on a parked car. It pierced his eyeball and he lost the eye. P sued the manufacturer, alleging negligence on the part of the manufacturer. D's demurrer was sustained. Hatch v. Ford Motor Co. (329 P. 2d 605, Cal., 1958)

Discuss both cases, distinguishing or reconciling them. Was one of the decisions "wrong"? Both? Neither? Why?

IV. (40 minutes) A. In Bosley v. Andrews (142 A. 2d 263, Pa., 1958) P sought to recover damages for a heart disability which resulted from her fright and shock upon being chased, while on her own property, by a Hereford bull, which was owned by D and which had escaped from D's enclosure. The bull did not strike or touch P, and P suffered no physical injury. However, at the trial she testified in these words: "I turned around and looked, and he [the bull] was coming at me with his head down, and I started to run, but I thought I could not get my legs to go and I choked up and I collapsed, and momentarily, I thought he was going to get me, I could just even feel that he was on top of me." P's collie dog intervened and, in the words of Musmanno, J., "The bull, then, as dull-witted as his brothers in the shouting arenas of Spain who pursue an innocuous red rag, took after the dog, and Mrs. Bosley was saved from a leaden-footed torreador's end." P fainted, was revived after some difficulty, and put to bed. The doctor who was called found her suffering from "an attack of coronary insufficiency and some heart failure." P's doctor testified that P had previously suffered from arteriosclerosis (hardening of the arteries) and that, while the episode with the bull did not cause the coronary attack, it did "constitute the trigger mechanism that brought the symptoms into clinical prominence, precipitating her first attack of coronary insufficiency leading to subsequent attacks." The judge allowed the question of property damage done to crops by the bull to go to the jury, but not the question of her alleged personal injury.

B. In Colla v. Mandella (85 N.W. 2d 345, Wis., 1957) P sued for the wrongful death of her husband from heart failure allegedly resulting from fright caused when D's driverless truck, negligently parked at the top of a hill on a road leading

to P's house, rolled into the side of the house near the windows of the bedroom where the husband was sleeping. The deceased was 63 years old and had previously suffered from high blood pressure and a mild heart condition. He was white and badly shaken after the event, remarking, "Gee, did I get scared. I heard a loud noise as though the house was shaking and coming down." That night he had difficulty breathing, gradually worsened, and died ten days later. The trial court denied D's motion for summary judgment, and D appeals.

(1) Discuss the basic problem involved in both cases.

(2) What result in each case on appeal?

(3) Can the cases be distinguished on the facts, or is the law as applied by the respective trial courts not to be reconciled?

V. (60 minutes) P owned 135 acres planted in cotton. At P's request a representative of D-1 (Central Valley Cooperative) inspected the crop, found insects known as cotton daubers, and advised P to use a spray containing DDT. P agreed and authorized D-1 to make the necessary arrangements for obtaining the spray and to apply it. D-1 instructed its pilot to do the spraying and delivered to him at the airport 5 new, sealed, 30-gallon drums of "DDTOL" manufactured by D-2 (Sherwin Williams Co.). The pilot opened the drums, mixed the contents with water per directions on the drums, and sprayed the crop. Shortly thereafter crop damage was noticed, plants grew abnormally, and production was adversely affected. Three experts examined the crop and found that the cotton was damaged by a plant hormone known as "2, 4-D" which is used as a weed-killer and has an adverse effect on cotton, even when used in extremely small quantities. Samples taken from the empty drums, as well as two unopened drums, disclosed the presence of "2, 4-D" in an amount toxic to cotton plants.

Labels on the drums gave directions for mixing and recommendations for use on various products, such as potatoes, seed alfalfa and clover, onions, and other truck crops but without mentioning cotton plants. Active ingredients were listed as "DDT-25%; Xylene-65%; inert ingredients-10%." The label also stated that "Seller makes no warranty of any kind, express or implied, concerning the use of this product. Buyer assumes all risks in use or handling, whether in accordance with directions or not." Burr v. Sherwin Williams Co. (268 P. 2d 1041, Cal., 1954)

Check the most nearly correct or the best answer in each case, and give a reason for your answer if a space is provided therefor. If a question cannot be characterized as either true or false, because of conflict between jurisdictions or some other reason, give reason only.

FINAL EXAMINATION IN TORTS B (LAW 304)

Second Semester 1959-1960

Professor Proehl

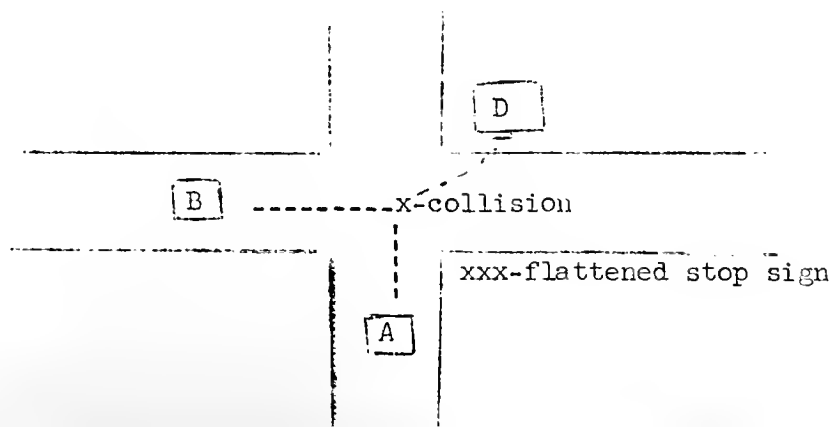
TIME: 4 HOURS

I. (90 minutes) On Monday a car negligently driven by Smith collided at an intersection with a bus owned by the City Transit Company (CTC), causing the bus to jump the curb and crash into and knock over a stop sign. The collision occurred without any negligence on the part of the driver of the bus, and he was unaware that after his bus had jumped the curb it had knocked over and flattened the stop sign. A state law made it a criminal offense to "remove, deface, or destroy traffic signs." On the following Wednesday, while the sign was still down, a car driven by Abel, a fifteen-year-old boy, proceeded through this intersection in the absence of the stop sign. He was, moreover, traveling at a rate of speed estimated by witnesses to be 55 m.p.h. in a 25-m.p.h. zone. He collided with a car driven by Baker, which approached the intersection from Abel's left, and which had the right-of-way in terms of the stop sign which "should have been there" (although Abel testified that the intersection was strange to him), but not in terms of established custom at intersections where no stop signs exist. At the time Baker was traveling within the speed limit. Witnesses did establish that his car was in the intersection before the car driven by Abel. Both Baker and his passenger, Carrie, whom, it developed, Baker had just brought across a state line in violation of the Mann Act (a federal law prohibiting the transportation of women across state lines for immoral purposes), were injured in the collision. On the stand, Carrie had admitted having seen the car driven by Abel approaching the intersection at a high rate of speed but admitted that she said nothing to Baker about it. A "guest statute", permitting an action by a guest against the host driver only upon a showing of "willful and wanton misconduct" obtained in the jurisdiction.

It was further developed at the trial that Abel did not hold a driver's license, that his mother owned the car, and that he was on his way downtown at the specific direction of his mother to purchase groceries. It was further developed that he saw the Baker car approaching the intersection but there being no stop sign on his street and, honestly believing that he could beat the Baker car across the intersection, proceeded, although he admitted he "could have stopped" and that the Baker car seemed oblivious to his approach.

After the two cars hit, the car of Baker veered off to his left, jumped the curb, and hit the porch of Doris's house, creating little property damage but a great deal of noise, with the result that Doris, who was sitting inside, was frightened, fainted, and struck her head on the corner of her grand piano, suffering serious head injuries. Doris testified she was frightened because she thought her five-year-old daughter was playing on the porch.

Discuss the various issues involved and determine all the possibilities of actions and where liability might rest as among these various parties.



II. (2 parts - 80 minutes) Mrs. Byrnes was awakened from an afternoon nap by the smell of smoke and the crackle of flames. She jumped up and ran through heavy smoke to another room to get her small child and then, half unconscious, stumbled to the telephone and dialed "O" for Operator. When the operator responded, Mrs. Byrnes was able to gasp only "Get the fire department . . . 109 Oak Street . . ." She heard the operator reply, "I am sorr-ee. . . We are not allowed to relay such information. You may reach the fire department by di-yalling Empire 5-3223." Mrs. Byrnes collapsed, unconscious by the telephone; she and her child were rescued by firemen called by a neighbor, but not before Mrs. Byrnes and the child had been severely burned. The house was a total loss.

Mrs. Byrnes and her daughter brought suit against the telephone company. At the trial, as the facts were reconstructed, it was estimated that the neighbor's call to the fire department was made 3 to 4 minutes after Mrs. Byrnes's attempt to call, and the City Fire Chief testified that in his view this period was critical, both as to the flames reaching the front hall, where the telephone was located, and as to the department's inability to subdue the fire and save the house.

The manager of the local telephone company testified that over a year ago its operators had been instructed not to relay messages for subscribers "because to accept the responsibility for doing so might result in garbling, misunderstandings, and perhaps liability for erroneously transmitted messages." Plaintiff's question as to whether the manager did not think the company had a duty to relay this call in these circumstances was objected to by defense counsel, which objection was sustained. The manager was, however, required to say whether the company's operators had, previous to the instruction, relayed "emergency calls." He said there had been "no policy" prior to the prohibition, that it might have happened locally, but that the prohibitory policy came from the state office and was not initiated locally. He testified that no public notice had been given concerning the prohibitory instruction given the operators. A witness for the plaintiff testified that two years ago an operator had been helpful in obtaining a veterinarian for her ailing dog. Plaintiff herself testified that she had no knowledge that operators had relayed messages but added that she never thought she would be refused. Plaintiff's counsel produced a news clipping five years old telling how a local boy's life had been saved by the "friendly operator" locating a local surgeon at a dinner party.

1. Why did defense counsel object to the question put to the manager and why was the objection sustained? Answer this question in the context of a discussion of the role of judge, jury, and witnesses in a negligence action. (30 minutes)

2. Should the telephone company be held liable to Mrs. Byrnes and the child for personal injuries and to Mr. Byrnes for the destruction of the house? Write the "heart" of an opinion as a judge might. (50 minutes)

III. (30 minutes) In his recent book, Traffic Victims: Tort Law and Insurance (1958), Dean Green, after a distinguished life of studying negligence law, observes, "The courts are powerless to reconstruct a rational process for general use. They have reached a dead end. As a means of giving adequate protection against the machines of the highway, negligence law has run its course. Something better must be found." (p. 82)

Depending upon your views, attack or defend this statement; do so with vigor, spirit, and logic.

IV. (40 minutes) Answer briefly and succinctly:

1. What kind of document appears to be the safest one for P's attorney to insist upon in effecting a settlement with one of several joint tortfeasors?
2. State what appears to you to be the critical elements of an intervening cause which will be considered to supersede the original actor's negligence.
3. Give an example of "involuntary assumption of risk."
4. Describe briefly the operative effects of *res ipsa loquitur*.
5. Why is strict liability a better term than absolute liability in cases where negligence need not be proved?
6. Distinguish contribution and indemnity.
7. Is contribution between tortfeasors a necessary consequence of joint and several liability? Discuss.
8. Give a brief, "working", definition of proximate or legal cause.
9. What is the critical factor in determining whether the negligence of one person will be imputed to another?
10. Contrast the doctrine of Rylands v. Fletcher with the "ultrahazardous activity" provision of the Restatement of Torts.

TIME: 3 hours

I. (2 hours) A Ford was passing north through an intersection. It was being driven by a competent, 16-year-old, unlicensed driver (D-1), who had as passengers an adult (G), not related to D-1, and D-1's younger brother (Y). The car was owned by D-1's father (F), who had given D-1 permission to use the car. D-1 was driving 7 miles in excess of the posted speed limit of 25 m.p.h.

A Buick was passing south through the intersection when the driver (D-2) decided to make a left-hand turn in front of the Ford; he thought that, given his speed (15 miles above the posted limit) and being farther into the intersection than the Ford, he could make it. He did not signal his turn. He had as his passengers two pals (P-1 and P-2) who had each provided \$1, along with D-2, to buy \$3 worth of gas, and they were headed for the Golden Onion. Also in the car was an adult girl (L), who thought she was being taken home and had on several occasions asked to be let out after the car had passed her apartment. D-2 had, unknown to any of his passengers, stolen the car from Owner (O), who had left the keys in the ignition when he parked to go into a drugstore. The accident happened approximately three hours afterward.

The Ford and Buick crashed. As a result G, Y, L, and P-1 were injured and both cars severely damaged. In the collision, a wheel came off the stolen car, rolled over the sidewalk and struck Nancy (N), a girl of five, and knocked her down, injuring her. N's mother (M) across the street, heard the crash, saw it, was frightened that the wheel might strike her (M) and felt faint. She then saw the wheel headed for her daughter and fainted, suffering bruises and a fractured skull. She was in her sixth month of pregnancy and her twins T-1 and T-2 were subsequently born weak and deformed, conditions which competent medical testimony testified, without contradiction, derived from her fall that day. T-1 survived and T-2 died shortly after birth.

A policeman (C), employed by the City, who was supposed to be directing traffic at the intersection, was in a restaurant drinking coffee at the time of the accident.

At the trial it was brought out that the wheel on O's car came loose because the impact of the collision had sheared loose an old cotter pin, one half of which was missing before the accident (an expert testified that one metal break was old and the other was fresh). O testified that he knew nothing of this defect, but he admitted that the car had not been greased or inspected for over a year, since it was an old car which he was planning to junk. A mechanic testified that had the car been greased, the defect would "probably" have been spotted.

At the trial D-2's attorney argued that if D-1 had paid proper attention to driving, he could have stopped in time to avoid hitting the Buick.

The following statutes are in effect in the jurisdiction:

- (1) A statute requiring a signal prior to making a turn.
- (2) A permissive use statute, such as New York's.
- (3) A statute prohibiting the leaving of keys in the ignition of unattended cars, such as Illinois's.
- (4) A Wrongful Death Act, such as Illinois's.
- (5) A statute making a city liable for the torts of its employees.
- (6) A Guest Statute, such as Illinois's.

Discuss in a systematic and comprehensive way the possible rights and liabilities involved. A diagram is attached to help you sort out the facts.

II. (20 minutes) In the above fact situation, suppose that Rescuer (R), a bystander, had rushed to the aid of D-2, who was slumped over the wheel. Upon R's arrival, D-2 recovered consciousness and, wild-eyed, grabbed a gun from the glove compartment and shot and injured R. D-2 was subsequently adjudged insane and committed to an institution. What are R's rights?

III. (40 minutes) Plaintiff's father (F) wanted to paint some bricks alongside his driveway white. He read the directions on a box of Bondex and mixed it with water accordingly. Plaintiff (P) was helping his father paint (by scraping away debris from bricks with a small hoe). While P was shifting position, his right eye came in contact with the paint brush, dripping with Bondex, which F was holding at his side. P, then 12 years old, experienced immediate pain. F quickly ran water into the eye. Within five to seven minutes P was on a hospital operating table. But P's eye was so burned that sight, other than ability to distinguish between light and dark, was permanently gone.

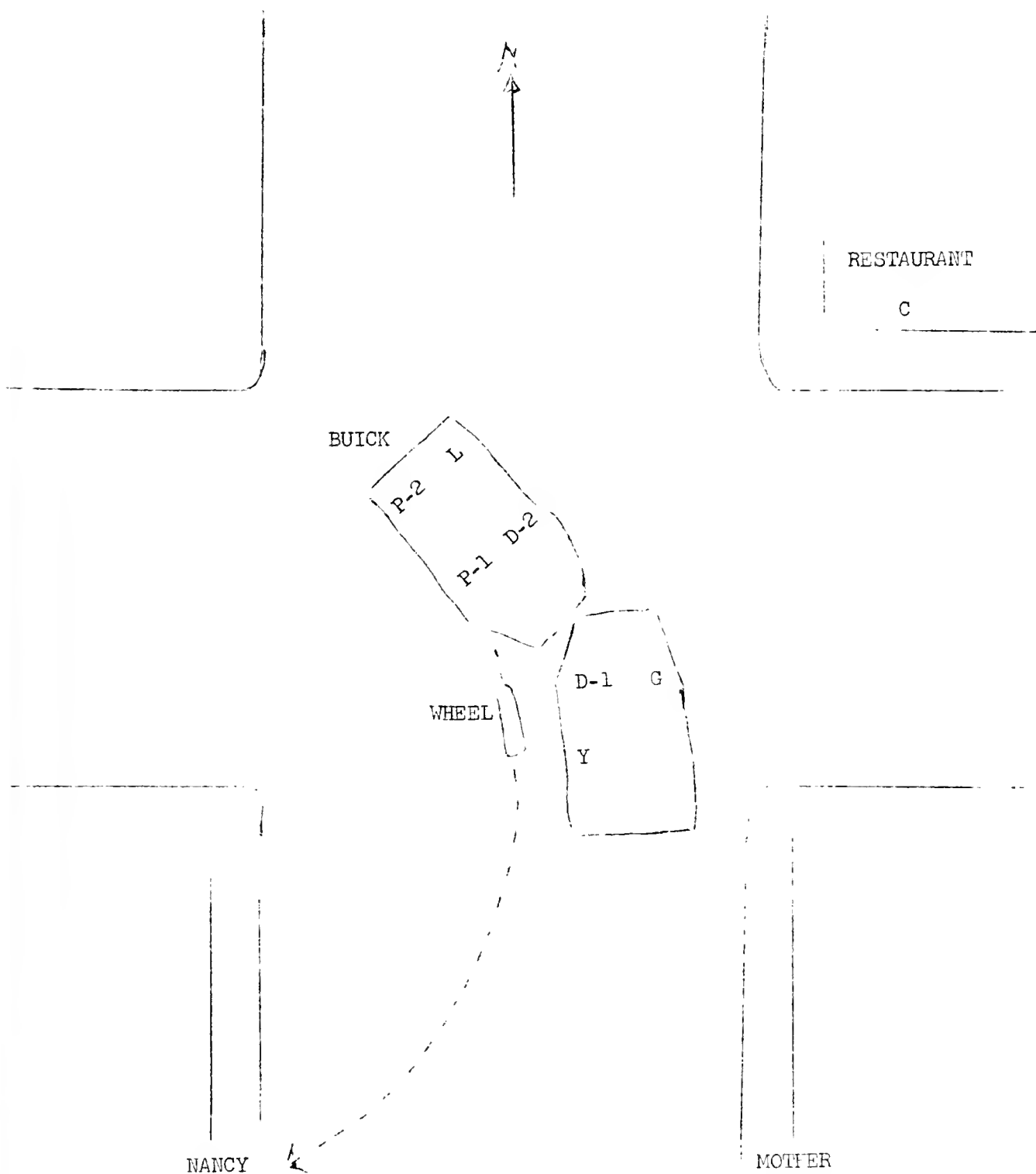
F had read the following on the Bondex box: "Caution: Inasmuch as the alkalinity of Bondex may be irritating to tender or sensitive skin, it is advisable to use a paddle for mixing, and to avoid excessive or prolonged contact with the skin." He also read at another place that the paint contained Portland cement and calcium oxide. Portland cement is 50 to 60% calcium oxide. Calcium oxide is lime. The corrosive and caustic effect of lime on the eye is well known; destructive, irreversible changes occur within a few minutes. F had never used Bondex before. He knew the danger of lime, but did not know that calcium oxide was lime or what it was, and did not know Portland cement contained lime. He testified that, if he had known Bondex contained at least 50% lime, he either would not have used it or would have taken precautions to make absolutely certain that none of it went into anyone's eyes. He knew some detergents or soaps might be irritating to a tender skin, which was the only significance he attached to the words of caution on the Bondex box. One of P's experts said it was not common knowledge that calcium oxide was lime. The executive vice-president of Bondex Co. (D) testified he had learned only two weeks prior to the trial that calcium oxide was lime. There was evidence that, subsequent to the accident, the warning on Bondex was changed by adding the words, "Care should be taken to avoid contact with the eyes."

1. What are P's rights against D?

2. F was covered by a comprehensive householder's liability policy. Should P's attorney have joined F as a defendant or have sued F in preference to D?

3. Suppose it had been a neighbor's child (N), watching F paint, who had been injured. What would N's rights be?

DIAGRAM FOR QUESTION I



PARTIES NOT PRESENT:

O - Owner of Buick
F - Owner of Ford

FINAL EXAMINATION IN TRADE REGULATION (LAW 355)

Second Semester 1958-1959

Professor Carlston

IMPORTANT. You will find a number on the upper right-hand corner of this page. This will be your examination number. Your grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on the list. DO NOT write your name on either this question sheet or the examination booklet.

ALWAYS state reasons with your answers. Always take a definite position one way or another in your answer. If you feel you must qualify it or that the result is only probable, indicate the reasons for your doubt.

You will have 4 hours for answering this examination. Take substantial time for thought before writing. You will be graded on clarity and organization as well as content.

(30 points) 1. X Company holds a combination patent on a water softener device, consisting of a tank containing a chemical compound through which the water to be softened passes. The compound is a collection of unpatented ingredients, which when placed together result in a water softening material having much greater lasting power than commercial water softeners hitherto used. X Company also holds U.S. registered trademarks, as follows: (1) "Duracom," for the chemical compound itself, and (2) "Duraserv," for a type of service in which the compound is periodically placed in softener tanks located in customers' houses or places of business. The president of X Company consults the law firm by which, it is assumed, you are employed. He requests advice on the following method of doing business:

(1) The patent will be licensed for its duration on the basis of a stipulated royalty for each 100 pounds of the type of softener specified in the patent placed in the tank for use. The licensee may purchase or acquire the chemical compound from any source, although the X Company is engaged in its manufacture and sale under the trademark, "Duracom."

(2) Each patent licensee will be requested to take a trademark license, giving him the privilege to use the trademark "Duracom" and "Duraserv" in the water softening business. While he must take such a license in conjunction with his patent license, the trademark license is terminable at will at any time by either party. The trademark license authorizes him to sell "Duracom" as a part of a method of doing business termed "Duraserv." The latter includes the grant of a warranty from X Company to the customer buying "Duracom" to the effect that each 100 pounds of "Duracom" will satisfactorily soften a certain number of gallons of water and that the licensee of "Duraserv" will at all times keep the customer's softening tank adequately serviced, provided the customer gives him access thereto.

Each such trademark licensee will be privileged to sell any other type of water softener, including softeners of the same specifications as those set forth in the patent, acquired from any competitor of X Company, but his price for "Duracom" must always match his price for such other water softener. He must, however, limit his service function, i.e., the periodic filling of customers' tanks on a standing order basis, to "Duraserv."

You are asked by your firm to prepare an opinion on the legality of the above proposed practices under the antitrust laws. What is your opinion and why?

(30 points) 2. A Chicago company, engaged in the rental of trailers for use in transporting goods by private passenger automobiles, submits to the law firm, by which, it is assumed, you are employed, a proposed plan or venture (1) for advice as to its legality under the antitrust laws and suggestions as to such modifications as the law

may render advisable, and (2) for taking such steps as may be advisable under Federal law before the plan is put into operation. The proposed plan is turned over to you for study and report. What is your advice with respect to the plan, as hereinbelow set forth:

There is to be established a national association of companies engaged in such trailer rentals, which will be called the U.S. Speed-Safe Trailer Rental Association. The headquarters of the association will be located in Chicago. Each member will receive a license to use the name of the association in his business and will be assigned a specific territory for his operations. Whenever he rents a trailer for transporting goods outside his area, the lessee will agree to deliver it, when he has finished with its use, to the association member in such territory. Such member will then give such trailer priority in any leases of the trailer which will be in the return direction towards its owner. If received by some other member, the latter will then endeavor to route it towards its owner and so on until the trailer is finally returned to its owner.

A standard list of trailer rental fees is furnished each licensee but he is free to charge such gross rentals on the association business as will be competitive with other trailer rental companies. A standard basis of division of rentals on trailers received through the association and owned by others is also furnished licensees. Licensees must once a month report to the association all rentals made in business of association origin, price charged and sums remitted to association members.

There will be two classes of members. Class A members will own ten or more trailers and Class B will own less. Class A members will be entitled to vote in the association's annual meetings.

The association will employ legal counsel to prepare standard form lease contracts, to collect on behalf of association members unpaid trailer rental bills and to represent it before legislative bodies.

No member may be connected with any other trailer rental association and each member shall be the sole association member in his territory.

(20 points) 3. The Brown Furniture Distributing Company, generally known as "Brown's," advertises itself as a furniture wholesaler. In fact, it receives large furniture orders from retailers and places them with furniture manufacturers. Any such order is required to be accompanied with cash equal to the manufacturer's price to wholesalers of the furniture, plus 1/2% commission for Brown's. Pursuant to trade custom, the furniture is shipped directly to the retailer by the manufacturer. Brown's makes its profit because it has only paper work to perform and provides no storage, repackaging or delivery services. A protest is filed with the FTC. Discuss the legality of this practice.

(20 points) 4. Plaintiff is engaged in the business of selling cold tablets under the name of "Way," with the "4" appearing above "Way." These are sold in white boxes, which bear the said name and also a statement of the four beneficial effects alleged to flow from their use. The pills are pink in color, grooved down the center and are hexagonal in shape.

The defendant is also selling cold tablets under the name "7-Way," with the "7" appearing next to the word "Way." These are sold in bottles, which bear the said name and a list of seven assertedly valuable ingredients. The pills are salmon in color, grooved down the center and are octagonal in shape.

Plaintiff introduced evidence that purchasers thought defendant's product to be an improvement over the plaintiff's product and to emanate from the plaintiff.

What decree should issue and why?

FINAL EXAMINATION IN TRADE REGULATION (Law 355)

First Semester 1959-1960

Professor Carlsten

IMPORTANT: You will find a number in the upper right-hand corner of this page.

This will be your examination number. Your grading will be made without knowledge of your name. A list of the members of this class will be passed around. Place your examination number in the space opposite your name on the list. DO NOT write your name on either this question sheet or the examination booklet.

ALWAYS state reasons for your answers. Always take a definite position one way or another in your answer. If you feel you must qualify it or that the result is only probable, indicate the reasons for your doubt.

You will have 3 1/2 HOURS for answering this examination. Take substantial time for thought before writing. You will be graded on clarity and organization as well as content.

(35 points) 1. Exco manufactures about 35% of the juke boxes, i.e., coin-operated phonographs, in the country. Its subsidiary, Juko, purchases about four-fifths of Exco's production, which it sold or leased under the trade mark "Juko" largely to restaurants, taverns, and the like. It does so under a contract to purchase its entire requirements of juke boxes from Exco. Exco acquired the stock of Fonoco, a phonograph disc recording company, which manufactures about 8% of the records sold in the country. Fonoco has a very strong position in the gospel type of music, manufacturing about 40% of such records. This type of music is particularly popular in the Southeastern states.

Juko advertised that any of its lessees desiring to purchase "Juko" juke boxes under lease to such lessees, could so purchase them under an arrangement whereby Fonoco would remit to Juko, to apply on the purchase price, in respect of all records purchased by such lessees from Fonoco, the difference between the list retail price of Fonoco's records and the price at which they were available to the public at the nearest record discount house selling to the public. The advertisement stated that leases were available to any person with good credit standing. Within one year after the above arrangement went into effect, Juko's leases of "Juko" juke boxes in the Southeastern states increased from about 33% to about 45% of the market. Fonoco's sales of records increased from about 8% to 9%, its sales of gospel records increased to over 50% of the national market, and its sales of gospel records in the Southeastern states increased to about 65%. Discuss the legality of:

- (1) Juko's entire requirements contract with Exco.
- (2) Exco's acquisition of the stock of Fonoco, in the light of all the pertinent facts of the case.
- (3) Juko's and Fonoco's sales policies.

(25 points) 2. Gageco manufactured a patented gage for measuring metal strain.

This gage was usually incorporated in scientific apparatus of various types but it could also be used by itself. Gageco licensed aircraft manufacturers to make and use its patented gage for 10% of their annual requirements. Any additional portion of their requirements of the patented gage had to be purchased from Gageco. The licensees could otherwise purchase gages from anyone. The licensee could not make any scientific apparatus employing the patented gage. Gageco licensed manufacturers of scientific apparatus to make, and include in such apparatus, its patented gage. Any such apparatus could be sold in any field of commerce except to aircraft manufacturers. Each such item of appa-

tus and each patented gage therein was required to have affixed to it a notice reading: "U.S.P. No. 3,000,000. Not licensed for use in aircraft industry." Gageco, in its own sales of scientific apparatus containing its patented gage and also in its own sales of patented gages, affixed the same notice to such items. The phrase "Not licensed for use in the aircraft industry" was omitted in sales to that industry, and the phrase "Licensed for use only in the aircraft industry" was substituted.

The aircraft manufacturers are the principal users of such gages and apparatus. Gageco sold to them all of the scientific apparatus employing the patented gage and all gages employing its patent, except for their own manufacture of patented gages. Gageco made about 10% of the gages used for measuring metal strains.

Discuss the legality of the above arrangements.

(15 points) 3. (a) Discuss the validity of the trade mark "Juko," mentioned in Question 1 above. (b) The directors of Exco, mentioned in Question 1 above, are thinking of establishing the trade mark "Juko" throughout its business, i.e., for all products manufactured by its group of companies. Discuss how this might be done.

(25 points) 4. The directors of Exco, mentioned in Question 1 above, decided that their corporate aggregate is too static for growth purposes and that they must enter some type of business which will enable a more rapid increase in their capital assets. They considered buying Acco, an electronics concern making principally tape recorders and engaged also in government contract research, which possessed a good research and engineering staff. The price proved to be too high and they decided instead to hire the principal engineers and research personnel of Acco and to enter the tape recording business and some other phase of the electronics industry. Each such former employee of Acco had agreed in writing not to divulge to others any trade secrets learned while in Acco's employ and not to enter into the employment of any of its competitors for a year after any termination of their employment with Acco. Any person leaving Acco's employ was entitled to a terminal payment of a sum equal to three months' pay. Each such former employee of Acco accepted this terminal payment on leaving Acco's employ. Acco was not notified by anyone that they were entering the Exco group of corporations when they left Acco's employ.

Each such employee entered the employ of Fonoco. Neither Fonoco or any one else in the Exco group had any notice of the facts in the preceding paragraph.

The said research and engineering personnel were made a work team to design a new tape recorder. This they did, in part utilizing designs that the engineers had been working up during their former employ by Acco. They also utilized for this purpose knowledge and skill in a certain area of thermoplastic recording in which Acco had been working but in which no product had as yet been put on the market by Acco. Fonoco put its tape recorder on the market three weeks after Acco's new model of the same reached the market. It was remarkably similar to it in appearance and duplicated or exceeded its special advantages in use. Some months later Fonoco was the first to introduce a commercial thermoplastic recording device.

Acco seeks your advice as attorney as to its legal rights. It wishes to know all possible remedies available to it, either in equity or common law, the theories of such causes of action, and its prospects of successful recovery therein. How would you advise them?

FINAL EXAMINATION IN TRIALS AND APPEALS (Law 335)

Second Semester 1958-1959

Professor Stone

TIME: 3 1/2 hours

Begin each answer with a statement of your decision or your conclusions. Discuss all points and issues involved, and give reasons fully, but concisely. If you think that further facts have to be assumed, assume them, and say what they are. If you think that ambiguities exist, point them out and resolve them in some stated way, or deal with the question on the basis of alternative resolutions. LARGE CREDIT WILL BE GIVEN FOR CLARITY, BREVITY, COHERENT ORGANIZATION, AND GOOD ENGLISH PROSE.

Please do not write any part of your answer on the first or the second page of your examination book; start your answer on page 3.

I. (30 points) James Sullivan and his wife, Jean, were injured in a collision between the Yellow cab in which they were riding and an automobile driven by George Gist. The cab driver was Paul Rector. Rector brought an action for personal injuries against Gist, and the Sullivans brought a similar action against Gist and Yellow. The actions were consolidated by the trial court. Gist cross-claimed against Yellow for personal injuries, and also filed a third-party complaint asserting that if any of the plaintiffs had been injured, it was by reason of Rector's negligence, and demanding judgment against Rector and Yellow in the amount of any judgment rendered against him in favor of the Sullivan plaintiffs.

1) Suppose the case is before an Illinois circuit court. Can the party or parties adversely affected obtain review of the rulings described below before the case is tried? Explore all possibilities, and give reasons for your conclusion in relation to each:

a) Upon Gist's refusal to comply with a court order that he submit to a physical examination, the judge dismissed his cross-claim.

b) The judge denied Gist's motion that the Sullivan plaintiffs be ordered to submit to a physical examination, and granted his motion that Rector be ordered to submit to a physical examination.

c) The judge granted summary judgment in favor of Yellow on the Sullivans' claim, Gist's cross-claim, and Gist's third-party claim. (The basis of the ruling was that Yellow was not vicariously liable for Rector's acts since he had fraudulently obtained the cab from the Yellow garage, and was pocketing fares collected.)

2) Suppose the case is before a United States district court. How, if at all, would your answer in each instance differ?

II. (40 points) In an action for personal injuries resulting from the collision of automobiles driven and owned by plaintiff and defendant respectively, the sole factual issue in relation to negligence and contributory negligence was whether plaintiff or defendant had entered the intersection against the red light. P and D were the only witnesses to the collision. P's case as to negligence consisted solely of his own testimony that D had entered the intersection against the red light. At the close of P's case, D moved for a directed verdict in his favor, which motion was denied. D offered no evidence. Both parties then made motions for directed verdicts, but the judge reserved rulings thereon.

a) The jury returned a general verdict for P and, in response to a special interrogatory, stated that P had not entered the intersection against the red light. The judge then granted D's timely motions for judgment and for a new trial. P appeals. What issues are presented to the reviewing court and how should they be resolved?

b) The jury returned a general verdict for D and, in response to a special interrogatory, stated that P had not entered the intersection against the red light. The judge then denied P's timely motions for judgment and for a new trial. P appeals. What issues are presented to the reviewing court and how should they be resolved?

c) Facts as in b) above. The reviewing court was the Illinois Appellate Court. Suppose that it held that the trial judge's ruling on the motion for judgment was correct, but reversed and remanded the case with instructions to grant the motion for a new trial. Suppose further that you are D's attorney and that your client has suffered retroactive amnesia and can remember nothing about the collision. What do you do now? Why? With what probable consequences?

III. (30 points) The Sino Importing Company, a California corporation with office in San Francisco, imports various items from the Orient for distribution in the United States. Among the items imported last year were some straw sampan hats for children, which hats were manufactured in the Portuguese colony of Macao by a Portuguese corporation, the Lisbon Manufacturing Company. Sino sold some of these hats to Michael McMahan, doing business as the Chinese Trading Company, a sole proprietorship, at XX Grant Street, San Francisco. Mr. and Mrs. James Smith, residents of Urbana, purchased two of these hats from the McMahan store, while visiting San Francisco recently. Upon their return to Urbana, they presented the hats as peace offerings to their small children, who had been left behind. The first time Junior Smith wore his hat in bright sunlight, it ignited, and burned him severely. An examination of the other hat revealed that a highly inflammable chemical with a very low ignition point had been used to color and preserve the straw.

a) Suit on behalf of Junior Smith was commenced against Sino, Lisbon, and McMahan, in the United States District Court for the Eastern District of Illinois, located in Danville. Process was personally served on Sino's president in his office in San Francisco. Process was served upon Mrs. Michael McMahan, who acts as buyer for her husband's business, while she was making purchases on Twenty-second Street in Chicago. Process was also served on Senor Trajo, a director of Lisbon, when he visited Chicago to raise funds for a mission school in which he had a personal interest.

None of the three defendants has any office or resident personnel in Illinois; Lisbon has none in this country. Each defendant moved to dismiss for lack of jurisdiction over the person. What issues are raised by each motion, and what ruling should be made thereon? (You may assume that the court has jurisdiction over the subject matter, and that venue is proper.)

b) Assume that suit was filed in the local Circuit Court instead and that personal service on Sino and McMahan was had within the state. Count I of the complaint was based on a willful and wanton theory; Count II on ordinary negligence; Count III on breach of warranty. Plaintiff proved purchase of the hats, the ignition of the one Junior was wearing, the chemical analysis of the other one, and absence of contributory negligence. The defendants introduced no evidence but moved for directed verdicts on all counts; the judge reserved rulings on the motions. The jury returned general verdicts for the plaintiff against Sino and McMahan.

What relief might each defendant request in his post-trial motion, and what grounds might each assert in support of each request?

TITLE 28, UNITED STATES CODE

§ 1291. Final decisions of district courts

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

§ 1292. Interlocutory decisions

(a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed;

(4) Judgments in civil actions for patent infringement which are final except for accounting.

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

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TIME: 3 HOURS

Begin each answer with a statement of your decision or your conclusions. Discuss all points and issues involved, and give reasons fully, but concisely. If you think that you must make assumptions as to fact or law, state what they are. LARGE CREDIT WILL BE GIVEN FOR BREVITY, CLARITY, COHERENT ORGANIZATION, AND GOOD ENGLISH PROSE.

- I. (90 minutes) (Do not assume uncritically that any of the judicial decisions described in the question is necessarily correct.)

Jones lent \$20,000 to Bigg Company. The loan was negotiated by J. B. Bigg, president and secretary of Bigg Company, a resident of Florida. The borrowed funds went into the corporate treasury and were used for corporate purposes. Jones received a one-year promissory note, signed on behalf of the company by J. B. Bigg. Payment on the note was due January 21, 1960. The note contained a confession-of-judgment clause. No payment on the note having been made on the due date, Jones instituted proceedings in an Illinois circuit court of proper venue to have a judgment by confession entered against Bigg Company. Judgment by confession was entered. The Bigg Company filed a motion to open the judgment; the motion was made promptly and was accompanied by an affidavit that disclosed a prima facie defense on the merits. The motion was granted on January 25, 1960. Jones then amended his complaint to add Counts II and III; Count II demanded \$20,000 from Bigg Company, and Count III demanded \$20,000 from J. B. Bigg; each was based on the theory that the defendant received \$20,000 from plaintiff and would be unjustly enriched if allowed to retain the benefit without repaying plaintiff. Count III contained allegations that J. B. Bigg deliberately deceived plaintiff as to Bigg's authority to contract on behalf of the Bigg Company. All of the foregoing occurred in Illinois.

(a) Bigg was served personally in Florida. Bigg moved to quash service on the ground that Bigg was not an Illinoisan, that the only business he has ever transacted in Illinois was in a representative rather than in an individual capacity, and that the complaint did not allege commission of a tortious act by him in that damages were asked on a quasi-contractual theory. What decision? Why?

(b) After denial of his motion to quash service, Bigg filed a motion demanding a jury trial. What decision? Why?

(c) Upon denial of his motion to quash service of process, Bigg's attorney requested and obtained from the trial court an express finding that there was no just reason for delaying enforcement or appeal; he thereupon appealed to the Supreme Court. Plaintiff moved to dismiss the appeal or transfer it to the Appellate Court. What decision? Why? If you believe that the appeal should be transferred, what disposition should the Appellate Court make of the motion to dismiss? Why?

(d) The appeal was dismissed. The case went to trial. There was proof to support, and proof to defeat a recovery against Bigg on a theory of deceit, but none to support recovery on a quasi-contractual theory. Plaintiff submitted instructions on both theories; Bigg objected to all of them and moved for a directed verdict. What decision? Why?

(e) The jury returned a verdict against J. B. Bigg in the amount of \$10,000 and against Bigg Company in the amount of \$11,000, making a total recovery of \$21,000, the principal amount of the note plus a year's interest. If you were Bigg Company's

attorney, what, if anything, would you do when the jury's verdict is announced? Why?

What, if you were Bigg's attorney?

What, if you were plaintiff's attorney?

(f) Assume that all points were preserved by appropriate and timely post-trial motions. Bigg Company appeals. One of the grounds of appeal is that there was no evidence to support recovery against the company on the note because a resolution of the Board of Directors had prohibited J. B. Bigg from borrowing money on behalf of the corporation without specific authorization from the Board, and no such authorization had been given. The record contains undisputed testimony evidence to this effect. Suppose that the substantive law exonerates the corporation from liability under these circumstances. Suppose further that no error was committed in relation to instructions or evidence on this subject. Has Bigg Company stated a sufficient ground for reversal of the judgment against it?

II. (45 minutes) (Suppose that Green and Harno are states of the United States and have legislation on procedure that is indistinguishable from the Illinois Civil Practice Act.)

John X. Cutive, a corporate officer who formerly lived in the State of Harno, obtained a new position with Mom's Apple Pie Corporation (hereinafter "MAP"), a corporation organized and doing business in the State of Green. He learned about the position through, and was assisted in obtaining it by, the Organization Man's Placement Bureau, a Harno partnership consisting of Slick, a Harno resident, and Craft, who lives in New Jersey. The Bureau's efforts on behalf of Cutive consisted entirely of correspondence and telephone calls.

Cutive's contract with the Bureau provides that if the Bureau should place him in a position with the salary he now earns from MAP, he is to assign to the Bureau as compensation for its services the first \$200 of his salary each month until a total fee of \$12,000 is paid. The contract was signed in Harno. Cutive has since moved to Green to assume his new position.

MAP has deducted \$200 from each of Cutive's first two salary checks, even though he has not executed any assignment. The Bureau has sent a photographic copy of Cutive's contract to MAP. MAP has informed Cutive that it considers that the contract operates as an assignment and that it will continue to make such deductions and forward the amounts thereof to the Bureau.

Cutive wants to avoid paying the Bureau what he now considers to be an exorbitant fee. He consults you, a Green lawyer. Your preliminary investigation indicates that possibly the contract between your client and the Bureau is unenforceable under Harno law and, under Green law, does not bind MAP, but that the Bureau would be an indispensable party to any litigation between Cutive and MAP. Outline a program of action to protect and advance the interests of your client. Consider and evaluate all litigational possibilities and the procedural problems concerned with each.

III. (45 minutes) In an action for personal injuries resulting from the collision of automobiles driven and owned by plaintiff and defendant respectively, the sole factual issue in relation to negligence and contributory negligence was whether plaintiff or defendant had entered the intersection against the red light. P and D were the only witnesses to the

collision. P's case as to negligence consisted solely of his own testimony that he had entered the intersection with the green light. At the close of P's case, D moved for a directed verdict; the motion was denied. D offered no evidence. Both parties then made motions for directed verdicts, but the judge reserved rulings thereon.

(a) The jury returned a general verdict for P and, in response to the sole special interrogatory, stated that P had not entered the intersection against the red light. The judge then granted D's timely motions for judgment and for a new trial. P appeals. What issues are presented to the reviewing court, and how should they be resolved?

(b) Same facts as in (a), except that in response to the sole special interrogatory, the jury responded that D had not entered the intersection against the red light. On P's appeal, what issues are presented to the reviewing court, and how should they be resolved?

Excerpts from the Judicial Code (Revised Title 28, U.S. Code)

§ 1332. Diversity of citizenship; amount in controversy

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and cost, and is between --

(1) citizens of different States;

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§1391. Venue generally

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside. . . .

§ 1404. Change of venue

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought. . . .

§ 1441. Actions removable generally

(a) . . . any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. . . .



